

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PRISONERS LEGAL)
ADVOCACY NETWORK,)
)
Plaintiff,) C.A. No. 23-1397-JLH
)
v.)
)
CARNEY, et al.,)
)
Defendants.)

Friday, April 19, 2024
1:00 p.m.
Courtroom 6C

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

ACLU OF DELAWARE
BY: DWAYNE J. BENSING, ESQ.
BY: ANDREW BERNSTEIN, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2
3 DELAWARE DEPARTMENT OF JUSTICE,
4 BY: LYNN KELLY, ESQ.
5 BY: KENNETH WAN, ESQ.

6
7
8 Counsel for the Defendant

12:59:47 8

12:59:47 9 COURT CLERK: All rise. The United States
12:59:48 10 District Court for the District of Delaware is now in
12:59:51 11 session. The Honorable Jennifer L. Hall presiding.

12:59:54 12 THE COURT: Hi, everyone. Please be seated.

12:59:58 13 All right. We're here in courtroom 6C because Judge Fallon
13:00:03 14 is picking a jury in courtroom 6D for my trial next week, so
13:00:07 15 we're playing musical courtrooms a little bit.

13:00:10 16 We're here today to hear oral argument on a
13:00:13 17 motion for a preliminary injunction. This is Prisoners
13:00:17 18 Legal Advocacy Network versus Carney, et al., civil action
13:00:22 19 number 23-1397.

13:00:24 20 Let's go ahead and put our appearances on the
13:00:26 21 record and we'll start with plaintiff.

13:00:31 22 MR. BERNSTEIN: Good afternoon, Your Honor.
13:00:31 23 Andrew Bernstein from ACLU Delaware here on behalf of
13:00:40 24 plaintiff.

13:00:41 25 THE COURT: Good afternoon. Welcome. All

13:00:46 1 right. And for defendants.

13:00:46 2 MS. KELLY: Good afternoon, Your Honor. Lynn
13:00:48 3 Kelly from the Department of Justice on behalf of the
13:00:49 4 defendants. At counsel table with me is Kenneth Wan from
13:00:53 5 the Department of Justice as well.

13:00:55 6 THE COURT: All right. Good to see everybody.

13:00:57 7 I see a lot of familiar faces in the room today. Okay. I
13:01:00 8 can tell you we've taken a look at the papers. I think we
13:01:03 9 understand what the arguments are. This is your chance to
13:01:06 10 add anything to the arguments you made in your briefings and
13:01:10 11 we also have some questions as well.

13:01:12 12 Let's hear from the movant.

13:01:20 13 MR. BERNSTEIN: Thank you, Your Honor. May it
13:01:28 14 please the Court.

13:01:29 15 Your Honor, we are here because some of the most
13:01:32 16 vulnerable Delawareans --

13:01:33 17 (Court reporter clarification.)

13:01:33 18 MR. BERNSTEIN: Is that better?

13:01:44 19 Your Honor, we are here because some of the most
13:01:47 20 vulnerable Delawareans are at risk of losing their most
13:01:52 21 fundamental right and being totally disenfranchised in the
13:01:52 22 rapidly approaching 2025 general election. More
13:01:56 23 specifically, I am here representing the Prisoners Legal
13:01:59 24 Advocacy Network. PLAN is an organization that has
13:02:01 25 dedicated time and resources towards advancing the voting

13:02:05 1 rights of incarcerated Delawareans. PLAN is composed of
13:02:09 2 incarcerated legal service recipients who wish to vote in
13:02:11 3 2024 and jailhouse lawyers and prison paralegals who wish to
13:02:13 4 assist those voters in casting ballots and are currently
13:02:17 5 unable to do so. More than 1,000 Delawareans on pre-trial
13:02:21 6 detention or serving misdemeanor convictions are likely
13:02:27 7 facing total disenfranchisement, including PLAN members.

13:02:27 8 Defendants acknowledge these citizens retain
13:02:31 9 their voting right. However, they plan to only offer these
13:02:35 10 voters unlawful absentee ballots. Delaware law is clear.
13:02:37 11 Article V, Section 4A of the Delaware Constitution is a
13:02:40 12 comprehensive list of those eligible to cast an absentee
13:02:46 13 ballot. Article V, Section 4A does not include incarcerated
13:03:21 14 voters among voters eligible to cast these ballots.

15 (Court reporter clarification.)

13:03:23 16 MR. BERNSTEIN: Would you like me to start over
13:03:25 17 from the beginning?

13:03:26 18 THE COURT: No. We're good.

13:03:32 19 MR. BERNSTEIN: Because these voters are not
13:03:34 20 being offered any option to vote other than absentee
13:03:38 21 ballots, they are facing total disenfranchisement offending
13:03:41 22 the fundamental right to vote and constitute an
13:03:44 23 unconstitutional discrimination under the Equal Protection
13:03:45 24 Clause. This total disenfranchisement constitutes a harm to
13:03:49 25 the public interest and an irreparable injury that is

13:03:52 1 greater than any interest the state has put forward at this
13:03:57 2 time that it may shoulder by remedying it.

13:03:57 3 We respectfully ask this Court to grant our
13:04:01 4 motion for a preliminary injunction and mandate in-person
13:04:02 5 voting opportunities to be provided to incarcerated
13:04:05 6 Delawareans.

13:04:06 7 Your Honor, I can field any questions you may
13:04:08 8 have, otherwise I am prepared to proceed with my argument.

13:04:10 9 THE COURT: Why don't you go ahead and I'll ask
13:04:13 10 the questions as they come up.

13:04:15 11 MR. BERNSTEIN: I will start, Your Honor, with
13:04:19 12 the likelihood of the success on the merits prong of the
13:04:23 13 preliminary injunction standard with the right to vote
13:04:24 14 claim. The Supreme Court has made clear that the
13:04:26 15 fundamental right to vote applies with equal force to
13:04:30 16 incarcerated individuals.

13:04:31 17 THE COURT: Okay. That's not disputed by
13:04:34 18 defendants.

13:04:34 19 MR. BERNSTEIN: Yes, undisputed in this matter.
13:04:37 20 And also undisputed in this matter is the *Anderson* verdict
13:04:42 21 framework is the analysis that applies to this fundamental
13:04:45 22 right to vote claim. The *Anderson* verdict framework
13:04:48 23 requires that balancing the State's interest put forward
13:04:51 24 imposing an infringement against the character and magnitude
13:04:55 25 of the infringement put forward. Under the Third Circuit

13:04:57 1 *Mazzo* case, it has been found that a severe burden makes a
13:05:02 2 case subject to strict scrutiny. And the Supreme Court has
13:05:07 3 also found, in cases such as *Rosario*, that instances of
13:05:11 4 total disenfranchisement constitute the severe burden.

13:05:16 5 THE COURT: Now, that, I guess, is what the
13:05:17 6 dispute is here is has there been a total
13:05:22 7 disenfranchisement? Right? They don't dispute that a total
13:05:26 8 disenfranchisement would be a severe burden, but they're
13:05:28 9 saying there has not been a denial of the right to vote and
13:05:31 10 there won't be. That's the dispute.

13:05:33 11 MR. BERNSTEIN: Your Honor, yes, that is a
13:05:35 12 dispute here.

13:05:38 13 THE COURT: Let me ask you. Has there been any
13:05:41 14 indication from the Delaware Supreme Court, any Delaware
13:05:46 15 official or any case or judge in Delaware that suggests that
13:05:52 16 the prisoners may not file absentee ballots.

13:05:57 17 MR. BERNSTEIN: Your Honor, we have the text of
13:06:01 18 *Higgin III*, which states that the text of Article V Section
13:06:05 19 4A is exhaustive. Those categories cannot be enlarged or
13:06:11 20 expanded upon in any way. Nowhere in that text will you
13:06:15 21 find an excuse for incarcerated voters to cast an absentee
13:06:19 22 ballot.

13:06:20 23 THE COURT: Okay. I don't think they dispute
13:06:21 24 that the categories are what they are. The real dispute is
13:06:25 25 whether or not a prisoner falls under one of the Delaware

13:06:29 1 constitutional and statutory categories. That's the
13:06:33 2 dispute, right?

13:06:34 3 MR. BERNSTEIN: Yes, Your Honor, that is a
13:06:37 4 dispute. But expanding -- taking any of the enumerated
13:06:44 5 categories in Article 5 Section 4A, it would be quite a
13:06:48 6 stretch to fit incarceration under any of those enumerated
13:06:52 7 exceptions. We have the text of *Higgin III* itself which
13:06:56 8 uses the phrase "workforce" to refer to the business for
13:06:59 9 occupation exception and there are replete examples within
13:07:04 10 the Delaware statutory code of people who are incarcerated
13:07:08 11 not being considered part of the workforce, goes against
13:07:12 12 common usage of the term.

13:07:13 13 And furthermore, there's just nothing in the
13:07:18 14 *Higgin* opinion that would suggest that -- that would suggest
13:07:22 15 that the State can't expand the text of those categories.

13:07:26 16 THE COURT: But at the end of the day, let me
13:07:29 17 back up to my question right before that. Which is, is
13:07:33 18 there anyone besides the plaintiff in this case that has
13:07:39 19 suggested or is suggesting that a prisoner doesn't fall
13:07:44 20 under the occupation or business exception? Is there
13:07:47 21 anything out there that makes you worried about that?
13:07:50 22 You're saying that's true. Is there anybody else from
13:07:52 23 Delaware saying that's true?

13:07:55 24 MR. BERNSTEIN: Your Honor, to our knowledge,
13:07:58 25 there are no pending cases or challenges to that effect.

13:08:04 1 But what there is is there is an increasing trend of
13:08:07 2 challenges to voters who wish to cast ballots, the
13:08:12 3 increasing trend of criminalization of voting and that has
13:08:16 4 created a chilling effect across the country with regard
13:08:19 5 to --

13:08:20 6 THE COURT: Have there been any such prosecution
13:08:21 7 is in the State of Delaware?

13:08:23 8 MR. BERNSTEIN: To our knowledge, Your Honor,
13:08:26 9 no, there have not been.

13:08:27 10 THE COURT: Let me ask you, what Delaware state
13:08:32 11 statute are your members of the association worried about
13:08:36 12 getting charged with?

13:08:38 13 MR. BERNSTEIN: Your Honor, there are two
13:08:39 14 statutes, one regarding two challenges to absentee ballots
13:08:45 15 and the other regarding the prosecutions.

13:08:47 16 THE COURT: Let's talk about the prosecution one
13:08:48 17 first.

13:08:49 18 MR. BERNSTEIN: Yes, Your Honor. That is Title
13:08:51 19 15 Section 5128 of the Delaware Code, fraudulent voting
13:08:56 20 statute. I can produce a copy of the statute.

13:09:01 21 THE COURT: I have it. Which element? Which
13:09:04 22 subsection?

13:09:04 23 MR. BERNSTEIN: Subsection 7.

13:09:06 24 THE COURT: Knowingly, willfully or fraudulently
13:09:09 25 does any unlawful act to secure an opportunity for himself

13:09:13 1 or herself or for any person to vote. So you're saying that
13:09:18 2 the Delaware attorney general would prosecute a prisoner for
13:09:28 3 just applying for an absentee ballot and what would be --
13:09:33 4 it's hard to imagine that conduct fitting under that section
13:09:38 5 of the statute. Can you explain to me why there's a real
13:09:42 6 worry?

13:09:43 7 MR. BERNSTEIN: Your Honor, I would respectfully
13:09:45 8 disagree that there is -- that it's speculation to think
13:09:51 9 that a voter could be charged under there. We understand
13:09:55 10 the representations of the attorney general in this matter
13:09:59 11 that they do not have plans to prosecute, but there have
13:10:02 12 been instances across the country where voters have been
13:10:06 13 told that they would not be prosecuted by state officials
13:10:08 14 and were prosecuted anyway.

13:10:10 15 THE COURT: Those were for prisoners who weren't
13:10:13 16 eligible to vote getting prosecuted for trying to vote when
13:10:16 17 they weren't allowed to vote. Here the voters are eligible
13:10:20 18 to vote, right? Your argument is that it's illegal for them
13:10:23 19 to vote because the Delaware statute allowing them to vote
13:10:28 20 is unconstitutional under Delaware law or that it's not --
13:10:33 21 that the attorney general shouldn't be accepting the
13:10:36 22 absentee ballots because that's unconstitutional under
13:10:40 23 Delaware law. That's a different, isn't it?

13:10:45 24 MR. BERNSTEIN: Your Honor, the issue is the
13:10:48 25 eligibility to cast the ballot. No one disputes that

13:10:52 1 incarcerated individuals retain their voter's rights. But
13:10:56 2 when it comes to who is eligible to cast an absentee ballot,
13:11:01 3 that is disputed and it is the case here that incarcerated
13:11:07 4 voters harbor fears regarding their ability to cast a ballot
13:11:11 5 under the Delaware constitution knowing statutes like this
13:11:15 6 are on the books that could plausibly apply to them. And
13:11:18 7 that extends also to PLAN's prison paralegals, jailhouse
13:11:25 8 lawyers who also potentially under this statute could fear
13:11:28 9 what might -- the potential ramifications of helping an
13:11:32 10 incarcerated voter who is ineligible to cast an absentee
13:11:36 11 ballot cast that ballot.

13:11:38 12 THE COURT: How did the attorney general or her
13:11:42 13 designee possibly prove that a prisoner or jailhouse
13:11:47 14 paralegal knowingly, willfully or fraudulently, unlawfully
13:11:50 15 helped someone or themselves submitted an absentee ballot?
13:11:56 16 If the attorney -- the application to get the absentee
13:12:01 17 ballot was approved by the attorney general and it's got a
13:12:04 18 check box for I'm currently incarcerated, how is that person
13:12:08 19 knowingly doing an unlawful act to secure their vote?

13:12:15 20 MR. BERNSTEIN: Your Honor, to the extent that
13:12:19 21 the jailhouse lawyers and prison paralegals are aware of the
13:12:24 22 *Higgin* decision, they would have to weigh the text of the
13:12:27 23 *Higgin* decision on one hand against the pronouncement of the
13:12:29 24 attorney general on the other hand and may make a decision
13:12:33 25 regarding whether or not they're able to continue with their

13:12:35 1 regular duties as members of the PLAN's organization. This
13:12:41 2 is a burden on both the voters, who might be aware here of
13:12:46 3 the *Higgin* decision and the attorney general pronouncement.
13:12:48 4 It's a burden on the jailhouse lawyers and prison paralegals
13:12:53 5 as well. And this kind of chilling effect is produced not
13:12:59 6 only by the statute we've been talking about, but it's also
13:13:04 7 produced by the absentee ballot challenge statute.
13:13:09 8 Defendants do not contest that the ballot challenges can be
13:13:14 9 brought on an unlimited basis, that there's no limit to how
13:13:18 10 many ballots can be challenged here. The absentee ballot
13:13:21 11 provision or Title 15 Section 5513 states that absentee
13:13:27 12 ballots can be challenged to the same extent that a regular
13:13:30 13 ballot can be challenged.

13:13:32 14 THE COURT: And we've looked at that. We
13:13:34 15 couldn't figure out to what extent a regular ballot can be
13:13:36 16 challenged. Can you walk us through what the ballot
13:13:39 17 challenge process is because that's not something I'm
13:13:43 18 familiar with?

13:13:43 19 MR. BERNSTEIN: My understanding, and this is
13:13:46 20 maybe a better question for defendants here, because I also
13:13:50 21 found that confusing, is that the ballot challenge typically
13:13:55 22 would relate to someone's eligibility to cast a ballot and
13:13:59 23 with regard to the actual mechanics of it. I don't know as
13:14:03 24 much on that end.

13:14:04 25 THE COURT: Okay. And the reason why I'm asking

13:14:06 1 is, I guess I'm wondering if a ballot gets challenged and
13:14:11 2 challenges this person shouldn't be casting an absentee
13:14:15 3 ballot because notwithstanding it's said on the absentee
13:14:20 4 ballot form that they're casting it because they're
13:14:24 5 incarcerated, but notwithstanding that, but because
13:14:27 6 prisoners shouldn't be casting absentee ballots, then would
13:14:32 7 there be an opportunity for the prisoner or somebody to try
13:14:35 8 to vindicate the right of the prisoner to vote and make -- I
13:14:40 9 guess you may not know the answer to that if you don't know
13:14:42 10 what the process is. Maybe we can hear that from the state.

13:14:45 11 MR. BERNSTEIN: Yeah, Your Honor, I do not know.

13:14:48 12 THE COURT: Okay. Let me ask you this. Reading
13:14:57 13 your complaint as well as the preliminary junction motion,
13:15:02 14 the remedy that your after is for the State to provide
13:15:07 15 voting machines at the prison, is that right?

13:15:09 16 MR. BERNSTEIN: Your Honor, any in-person voting
13:15:13 17 opportunity would, in our clients' mind, resolve the
13:15:17 18 constitutional issue at hand. In person voting machines
13:15:25 19 being implemented in DDOC, Delaware Department of Correction
13:15:27 20 facilities, has been the primary suggested relief here in
13:15:34 21 large part because it's been proven workable in other
13:15:37 22 jurisdictions. Since the filing of the last paper in this
13:15:42 23 argument, an additional jurisdiction has implemented
13:15:47 24 in-person voting in its facility, so the total is now five
13:15:51 25 states and Washington, D.C., having voting in at least some

13:15:57 1 of their facilities. At those jurisdictions that have those
13:16:01 2 mechanisms in place serve larger populations, in some
13:16:08 3 instances, than are incarcerated in all of Delaware. For
13:16:12 4 example, more individuals voted in the Cook County prison
13:16:16 5 locations than there would be eligible Delawareans
13:16:19 6 incarcerated to vote. So that's been suggested primarily
13:16:24 7 due to its proven workability in other jurisdictions.

13:16:27 8 THE COURT: I'm wondering if your comment about
13:16:31 9 there may not be that many prisoners in Delaware as an
13:16:36 10 absolute number that would be able to take advantage of
13:16:38 11 this, because there just aren't as many pretrial detainees
13:16:42 12 and convicted misdemeanor defendants in the prison during
13:16:47 13 the election as there are in other districts. Doesn't that
13:16:51 14 cut against the Court ordering a remedy of in person? If I
13:16:55 15 agreed with you that as a matter of state law absentee
13:17:00 16 ballots by pretrial detainees are prohibited, why couldn't
13:17:09 17 the remedy I order be that the state has to give the
13:17:13 18 prisoners absentee ballots?

13:17:16 19 MR. BERNSTEIN: Your Honor, if I don't address
13:17:20 20 the entire question, I want to make sure I address every
13:17:23 21 point, so let me know.

13:17:24 22 THE COURT: Right.

13:17:24 23 MR. BERNSTEIN: But the *O'Brien* case, I think is
13:17:29 24 on point here in the sense that the there the state supreme
13:17:35 25 court made a pronouncement regarding who was eligible to

13:17:38 1 vote under absentee laws and then the Supreme Court of the
13:17:44 2 United States, in their opinion, said it was not their
13:17:47 3 function to construe those laws differently. Here, we have
13:17:52 4 a definitive construction of Article 5 Section 4A that at
13:17:58 5 this point this court is obligated to follow, that the
13:18:04 6 categories are what they are, they cannot be expanded upon
13:18:06 7 or enlarged in any way and that none of the categories --
13:18:11 8 and that the categories should be given a reading that
13:18:14 9 sticks to the text, that sticks to what the common
13:18:19 10 understanding or historical understanding of what those
13:18:23 11 categories would be, which is laid out in *Higgin*.

13:18:26 12 Your Honor, there was a second part to your
13:18:28 13 question that I'm going to get to. Apologies.

13:18:31 14 Regarding the cutting against our client perhaps
13:18:36 15 that there aren't as many people who would be eligible
13:18:40 16 voters in this jurisdiction, the case law is clear the right
13:18:43 17 to vote is an individual right. The *Frank v. Walker* case
13:18:47 18 that was cited in the briefing has great language to that
13:18:51 19 effect, that even if 99% of those voters aren't eligible to
13:18:57 20 cast a ballot are not included, that there's still -- this
13:19:01 21 court is still obligated to implement remedies and resolve
13:19:05 22 disputes regarding the fundamental right to vote for that
13:19:08 23 remaining 1%.

13:19:09 24 THE COURT: And I appreciate your comments. I
13:19:13 25 guess what I was more thinking of, if there aren't that many

13:19:16 1 people that are going to be voting at the prison, shouldn't
13:19:21 2 the Court take into account the State's interests in how
13:19:27 3 much it's going to cost when determining what remedy to
13:19:31 4 order, whether the Court orders absentee ballots be given
13:19:35 5 versus in-person voting. But I want to go back to what you
13:19:40 6 said right after that, which is I think I heard you say that
13:19:46 7 the only relief the Court can order is in-person voting.
13:19:50 8 The Court couldn't remedy an alleged constitutional
13:19:53 9 violation by ordering the State to provide some other means
13:19:57 10 of voting, including absentee ballots? The federal court
13:20:03 11 can't order the state to do that.

13:20:04 12 THE COURT: My understanding from the *O'Brien*
13:20:06 13 case, Your Honor, is that the Supreme Court decided in that
13:20:13 14 instance that the state supreme court was the final arbiter
13:20:18 15 of what state law was. And here we have a similar
13:20:22 16 determination that has occurred where the Court in *Higgin*
13:20:25 17 *III* made a final determination regarding the Delaware
13:20:27 18 constitution. The remedy simply has to comply with the
13:20:33 19 Delaware Supreme Court's understanding of the Delaware
13:20:36 20 constitution is my understanding of *O'Brien*.

13:20:41 21 THE COURT: All right. Okay. Anything else you
13:20:45 22 wanted to add before we hear from the other side?

13:20:47 23 MR. BERNSTEIN: Your Honor, I would just also
13:20:51 24 add, just I think this was addressed in defendant's briefing
13:20:56 25 and we touched on it briefly on a reply, but to the extent

13:21:01 1 that standing concerns have been brought up in this matter,
13:21:05 2 I would just like to make it clear now that PLAN asserts
13:21:10 3 standing under multiple theories of standing, organizational
13:21:14 4 and associational. They've spent resources on this issue,
13:21:17 5 they have members who are currently estopped from doing
13:21:21 6 there work under the association theory, so I just wanted to
13:21:25 7 make that clear.

13:21:26 8 THE COURT: And I appreciate you bringing up
13:21:28 9 standing, because I understand your point about that you say
13:21:35 10 there's enough here in terms of is the right plaintiff
13:21:39 11 before the Court. There are -- we take, for purposes of the
13:21:42 12 argument, that PLAN has members that want to vote and want
13:21:47 13 to vote from prison and so there's this question about
13:21:51 14 whether or not they can vote if they're not allowed absentee
13:21:54 15 votes.

13:21:55 16 There's another aspect of standing, though, that
13:21:58 17 requires that there be an imminent injury. And I'm
13:22:04 18 wondering if that's been met here given that the attorney
13:22:07 19 general has said that they don't plan to prosecute prisoners
13:22:12 20 that attempt to vote absentee as well as all indications are
13:22:18 21 that the absentee application is going to have a check box
13:22:22 22 for prisoners, suggesting that the State plans to provide
13:22:25 23 this opportunity. There's no indications, at least I
13:22:28 24 haven't heard any, that they're not going to.

13:22:31 25 MR. BERNSTEIN: Your Honor, I would respectfully

13:22:35 1 point you towards the jailhouse lawyers and prison
13:22:38 2 paralegals who are currently impeded from doing work, that
13:22:42 3 there whole function regarding securing the right to vote of
13:22:46 4 other incarcerated individuals is changed from helping
13:22:50 5 people understand what their rights are -- sorry -- from
13:22:53 6 helping people prepare to cast ballots to helping people
13:22:56 7 understand that there is this confusion now.

13:22:58 8 THE COURT: So the person telling -- I just want
13:23:01 9 to make sure. The people that are telling prisoners they
13:23:04 10 can't vote, that's coming from your side, not from their
13:23:07 11 side, right?

13:23:08 12 MR. BERNSTEIN: Your Honor, the people
13:23:13 13 explaining the current situation, the landscape how the
13:23:16 14 right to vote is unstable, how they might not have a right
13:23:19 15 to vote, that is coming from PLAN.

13:23:23 16 THE COURT: So that injury is not traceable to
13:23:25 17 those defendants that are before the Court today, right?

13:23:29 18 MR. BERNSTEIN: Your Honor, I would disagree and
13:23:31 19 say that there wouldn't be a need for that kind of
13:23:35 20 corrective messaging if the State hadn't refused to
13:23:40 21 implement a constitutional guarantee mechanism of voting.

13:23:45 22 THE COURT: Thank you very much.

13:23:47 23 MR. BERNSTEIN: Thank you.

13:23:57 24 MS. KELLY: Good afternoon again, Your Honor.
13:23:59 25 Lynn Kelly on behalf of the defendants.

13:24:02 1 May it please the Court, Your Honor, defendants
13:24:05 2 respond in opposition of the motion for preliminary
13:24:08 3 injunction and the temporary restraining order requested by
13:24:13 4 this court.

13:24:13 5 Just a little bit of factual background. It
13:24:16 6 appears that the Court has certainly reviewed all the
13:24:18 7 documents submitted by the parties, but I would just like to
13:24:21 8 highlight some of the facts that were submitted by the
13:24:26 9 commissioner of the department of elections and the
13:24:29 10 commissioner of the department of corrections.
13:24:32 11 Specifically, I think the Commissioner Albence stated that
13:24:38 12 the department of elections has for 40 years under elections
13:24:41 13 policy provided absentee voting to eligible incarcerated
13:24:47 14 people, either through -- definitely by the absentee ballot,
13:24:53 15 but either under the physical disability exception or
13:24:57 16 business and occupation exception under the constitution.

13:25:03 17 In 2018 that absentee ballot became -- it was
13:25:09 18 essentially drafted so that the business or occupation
13:25:12 19 reason included otherwise eligible persons who are
13:25:16 20 incarcerated and it has continued since 2018. Both
13:25:24 21 commissioners confirm that the agencies have worked together
13:25:28 22 to educate not only the staff, but educate the eligible
13:25:33 23 incarcerated people on the absentee ballot how to go about
13:25:39 24 getting that.

13:25:40 25 THE COURT: The State agrees that eligible

13:25:43 1 incarcerated people have the right to vote unless they're
13:25:48 2 precluded by some other conviction or something like that?

13:25:53 3 MS. KELLY: Yes, Your Honor, I think that
13:25:55 4 eligible incarcerated -- I say eligible, I mean --

13:25:59 5 THE COURT: They're not convicted of a felony
13:26:01 6 that disqualifies them from voting.

13:26:03 7 MS. KELLY: That's right.

13:26:04 8 THE COURT: There's no dispute here that these
13:26:07 9 people have the right to vote.

13:26:09 10 MS. KELLY: No, that's correct, Your Honor. I
13:26:11 11 believe it's convicted misdemeanor and pretrial detainees.
13:26:14 12 When I say eligible incarcerated people, those are who I'm
13:26:18 13 talking about. And I think Commissioner Albence's
13:26:22 14 declaration also makes clear that the harm to the State
13:26:25 15 should the Court award in-person voting is that \$1 million
13:26:30 16 per election cost as well as the cost of resources to staff
13:26:34 17 that in-person voting as well.

13:26:36 18 I think it's important, before I get into
13:26:39 19 argument, just to --

13:26:41 20 THE COURT: Is it the State's position, if I
13:26:42 21 agreed with them that the *Higgin* decision absolutely barred
13:26:51 22 incarcerated misdemeanor defendants and pretrial detainees
13:27:00 23 from voting absentee because that's unconstitutional under
13:27:07 24 the state constitution, is it the State's position that the
13:27:10 25 federal court could not order the State to provide absentee

13:27:13 1 ballots and that that would remedy the constitutional
13:27:17 2 violation?

13:27:22 3 MS. KELLY: I think it --

13:27:25 4 THE COURT: Put another way, the plaintiff is
13:27:27 5 saying the only thing I could order is in-person voting in
13:27:31 6 some way. Would you disagree with that?

13:27:34 7 MS. KELLY: I absolutely disagree with that. I
13:27:37 8 disagree with it -- first of all, this is a case of first
13:27:42 9 impression. *Higgin* did not deal with this issue. *Higgin*
13:27:45 10 has a couple of holdings that I think one of the holdings
13:27:49 11 plaintiff focus on in this case before you, but it's not --
13:27:54 12 it's a case of first impression. So I absolutely think that
13:27:57 13 for the Court to look at this the first time today and say,
13:28:03 14 well, I have a question about constitutionality, but we're
13:28:06 15 going to award absentee voting to this group of people,
13:28:10 16 absolutely. I don't think the only -- I don't think that's
13:28:14 17 the only option. I think the other option potentially could
13:28:19 18 be to have these people petition for a bail review and be
13:28:24 19 permitted to go before the in-person voting to be escorted,
13:28:32 20 however -- that has never been explored. Other options of
13:28:36 21 voting has never been explored before, because it hasn't had
13:28:41 22 to be. I hope I answered the Court's question.

13:28:46 23 THE COURT: No. I think my question -- I
13:28:48 24 appreciate that. I think my question is convoluted, but
13:28:51 25 basically what I'm saying, the plaintiff is saying if I find

13:28:55 1 that there was a constitutional violation, just assuming
13:28:58 2 that that's the case, am I restricted in what type of remedy
13:29:02 3 I can order to stop that constitutional violation? Am I
13:29:08 4 restricted by the Delaware state constitution that says, no
13:29:13 5 absentee ballot voting by prisoners, if they're right that
13:29:17 6 that's what it says, or can I say, no, yes absentee voting
13:29:22 7 by prisoners, I don't care what the Delaware constitution
13:29:25 8 says if it says that it's unconstitutional.

13:29:28 9 MS. KELLY: I think the Court can hold that
13:29:30 10 absentee ballots are permitted for this group of people. I
13:29:34 11 absolutely think that, and I think that because no Delaware
13:29:39 12 Court or statute has permitted it to date. There's no
13:29:44 13 prohibition to that and I think that's why we're here.

13:29:54 14 *Albence v. Higgin*, I think is kind of where I
13:29:56 15 want to start with, because this is the catalyst that the
13:29:58 16 plaintiffs argue is the reason that this court -- that this
13:30:02 17 court is considering the case.

13:30:05 18 In the summer of 2022, Delaware enacted a new
13:30:08 19 statute, the vote-by-mail statute. It became subject of a
13:30:13 20 lawsuit. When the supreme court looked at it in *Albence v.*
13:30:20 21 *Higgin*, the extrapolated opinion in December of 2022 looked
13:30:24 22 at the entire history of the constitution, reviewed for
13:30:29 23 pages what Delaware has done with the Delaware constitution,
13:30:33 24 reviewing it, amending it, et cetera, And in it's full
13:30:37 25 written opinion, the court determined -- and this is the

13:30:39 1 holding that the plaintiffs focused on. The categories for
13:30:42 2 absentee voting enumerated under Section 4A are exhaustive
13:30:46 3 and excluded the additional further categories absent
13:30:52 4 constitutional amendment. It's important to note that at
13:30:57 5 the page of the holding, 1093 and 1094, that holding is
13:31:03 6 adopted from the 1972 opinion of the justices. This is not
13:31:10 7 a new holding. It is lifted from 1972, placed in the 2022
13:31:16 8 decision. For there to be -- and I'll argue this again
13:31:20 9 later. Maybe I don't need to. For there to be an argument
13:31:23 10 now that this December 2022 case is a new holding and we've
13:31:29 11 got to get this before the federal district court for a
13:31:33 12 primarily injunction is just not based in the law. The
13:31:37 13 ultimate holding of the *Higgin* decision, like I said, is
13:31:40 14 that the vote-by-mail statute is unconstitutional.

13:31:43 15 THE COURT: And the vote-by-mail statute is a
13:31:46 16 different statute than the statute we're talking about here,
13:31:49 17 right?

13:31:50 18 MS. KELLY: That's correct.

13:31:51 19 THE COURT: The statute here is the person is
13:31:52 20 eligible to vote by absentee ballot.

13:31:55 21 MS. KELLY: Is that the --

13:31:57 22 THE COURT: 502.

13:32:03 23 MS. KELLY: Absentee -- the absentee voting
13:32:06 24 statute is -- the absentee voting statute is not at issue in
13:32:12 25 this case, Your Honor. I think the policy of the Delaware

13:32:15 1 Department of Elections in conjunction with the *Higgin*
13:32:21 2 decision is what's being questioned by plaintiff, if I
13:32:24 3 understand the argument presented today. I don't believe
13:32:28 4 that the absentee statue is at issue today. I know that
13:32:36 5 *Albence v. Manella* is challenging permanent absentee voting,
13:32:39 6 but that's ongoing in the Delaware supreme court at this
13:32:42 7 time.

13:32:42 8 THE COURT: So let me just -- because I want to
13:32:45 9 understand exactly what the State's positions. The Delaware
13:32:48 10 Supreme Court says that the Delaware constitution says that
13:32:51 11 certain categories of people are allowed to vote by absentee
13:32:55 12 ballot and that Delaware legislature can pass laws to
13:33:02 13 facility that, right?

13:33:04 14 MS. KELLY: Correct.

13:33:05 15 THE COURT: And the Delaware legislature has
13:33:07 16 passed a law saying that people can vote by absentee ballot
13:33:10 17 and its got a list of people that tracks, but not exactly,
13:33:14 18 the list that's in the constitution. It doesn't say
13:33:19 19 anything expressly about people who are incarcerated, but
13:33:25 20 otherwise eligible to vote. But the executive branch of the
13:33:31 21 Delaware government has always interpreted that absentee
13:33:36 22 ballot statute to include prisoners, either under the
13:33:39 23 business and occupation exception or the disability
13:33:44 24 exception. That's fair?

13:33:46 25 MS. KELLY: That's correct.

13:33:54 1 Your Honor, I would like to start with the
13:34:00 2 Pullman Abstention Doctrine. As the Court is aware, the
13:34:03 3 Abstention Doctrine applies the principles of federalism and
13:34:07 4 allows the state courts to decide state law issues. If I
13:34:15 5 understood my peer's argument today, I understood that he
13:34:19 6 conceded under O'Brien that this issue is more properly
13:34:24 7 decided by the Delaware Supreme Court. I could have
13:34:28 8 misunderstood his statement, but I understood him to say
13:34:33 9 that a Delaware constitutional issue is more properly
13:34:36 10 decided by the Delaware Supreme Court.

13:34:37 11 THE COURT: Let me ask you that. They said they
13:34:40 12 were unaware of any cases that were challenging this. Is
13:34:45 13 the State aware of any cases challenging whether or not
13:34:48 14 incarcerated individuals can vote by absentee ballot?

13:34:54 15 MS. KELLY: I am not aware. Your Honor, I think
13:34:56 16 this is the case of a first impression, as I've stated.

13:34:59 17 THE COURT: Yeah. And I guess the reason why
13:35:01 18 I'm wondering is, a lot times when we here Pullman, maybe
13:35:05 19 this goes to standing as well. There's just some sort of
13:35:08 20 suggestion that something is going to kind of get worked out
13:35:11 21 in the state court and maybe the federal court shouldn't
13:35:14 22 jump in until the state court has a chance to say, yes, this
13:35:17 23 is what our state law means or this is what it doesn't mean
13:35:20 24 or somebody's actually being prosecuted or somebody's been
13:35:24 25 denied the right to fight. But here I'm abstaining for what

13:35:28 1 if there's nothing going on?

13:35:31 2 MS. KELLY: Well, I think -- there is no
13:35:36 3 challenge at the moment with regard -- I really view this
13:35:41 4 case to be a challenge of the department's policies and the
13:35:45 5 department's interpretation of the constitution. This is
13:35:49 6 not a case where the state agency is saying no, you don't
13:35:52 7 have the right to vote. We're giving what we think is
13:35:56 8 proper given the constitutional right to vote. So I'm not
13:36:01 9 aware of any ongoing or pending anything, any challenges to
13:36:07 10 the department's policy to allow these voters to vote
13:36:10 11 absentee.

13:36:12 12 THE COURT: Would you agree -- if the Delaware
13:36:16 13 Supreme Court said yeah, the Delaware constitution, when it
13:36:20 14 says business or occupation, that includes people who are
13:36:25 15 incarcerated, if they said that, then this case would be
13:36:28 16 over, right?

13:36:29 17 MS. KELLY: A hundred percent.

13:36:31 18 THE COURT: Should we just ask them? There's a
13:36:37 19 method by which we can do that.

13:36:39 20 MS. KELLY: I actually didn't know that, Your
13:36:41 21 Honor. I'm sorry. I had no idea.

13:36:47 22 THE COURT: Yeah.

23 MS. KELLY: Is that a certified --

13:36:47 24 THE COURT: Certified question of law.

13:36:47 25 MS. KELLY: Right. I have --

13:36:52 1 THE COURT: I mean, maybe there's an strategic
13:36:55 2 reason one side or the other might not want to do that. And
13:36:58 3 I can think of reasons why that might be, but maybe you
13:37:01 4 don't have such a reason.

13:37:02 5 MS. KELLY: I don't think that option has been
13:37:04 6 explored by either side and if the other side has explored
13:37:07 7 it, I'm not aware of it. There's not been discussion
13:37:11 8 between the parties about that.

13:37:12 9 THE COURT: Let me ask you this. Similar to
13:37:15 10 your Pullman Abstention argument, is there a procedure --
13:37:17 11 now I will demonstrate my lack of knowledge about state
13:37:21 12 procedural law. Is there a procedure by which the plaintiff
13:37:24 13 like the plaintiff we have here today could go to the state
13:37:26 14 court and seek a judgment about whether or not the
13:37:30 15 declaratory judgment or a declaration or something about
13:37:33 16 whether or not prisoner absentee voting is constitutional?

13:37:37 17 MS. KELLY: I think certainly in this chancery
13:37:41 18 court there is the same avenue that is before the Court
13:37:46 19 today. It's a primary injunction in chancery court to
13:37:50 20 determine constitutionality of the practice of the
13:37:55 21 Department of Election. So absolutely.

13:37:59 22 THE COURT: Okay.

13:38:05 23 MS. KELLY: I think the Court is already aware
13:38:16 24 of the other elements and factors it needs to consider under
13:38:22 25 the Pullman Abstention Doctrine.

13:38:22 1 I think I would note, the final point I'd make
13:38:24 2 on the Pullman Abstention Doctrine and why the defendants
13:38:27 3 believe it's appropriate here. The reply brief mentions
13:38:30 4 that the Abstention Doctrine should not be applied to voting
13:38:34 5 rights cases and I think the third case they cite goes *CY*
13:38:41 6 *Development vs. City of Redlands*, but that case actually
13:38:45 7 says that there is no per se civil rights violation
13:38:49 8 exception to the Abstention Doctrine. So to the extent the
13:38:54 9 Court was not inclined to use that doctrine in this case
13:38:59 10 with regard to voting rights, I don't -- I think the case
13:39:02 11 law is pretty clear that the Court is free to use that
13:39:06 12 doctrine here.

13:39:08 13 Turning to the preliminary injunction, the
13:39:12 14 merits of the argument and the likelihood of success on the
13:39:16 15 merits, the plaintiff lacks standing here because there is
13:39:22 16 no evidence or affidavit from a member of the organization
13:39:27 17 demonstrating a direct effect. There is, attached to the
13:39:33 18 reply brief, an attorney affidavit that says that PLAN
13:39:39 19 understands that some members in the DDOC facility harbor
13:39:44 20 concerns about their ability to cast absentee ballots
13:39:50 21 and the repercussions they face if they attempt to do so.
13:39:55 22 This assertion is a concern from the attorney -- well, I'm
13:40:00 23 sorry. A concern from the members signing an affidavit
13:40:05 24 through their attorney. It's not the affidavit that's
13:40:08 25 required for harm. And really we don't have evidence in the

13:40:13 1 case of that -- of any harm. In fact, the incarcerated --
13:40:22 2 eligible incarcerated people are provided the right to vote.

13:40:27 3 With regard to the *Anderson* verdict sliding
13:40:32 4 scale test that was discussed earlier, it's the State's
13:40:36 5 position that is a flexible test because there's no denial
13:40:41 6 of the right to vote. It is a -- it is not a severe burden
13:40:46 7 to the plaintiffs. It's -- because they're granted the
13:40:52 8 right to vote, there is very little burden to the plaintiffs
13:40:57 9 here. And the lesser standard should apply. The State's
13:41:02 10 legitimate state interest is the resources of, as I stated
13:41:07 11 before, the million dollars per election. That certainly
13:41:12 12 outweighs any minimal burden to the plaintiffs in this case.

13:41:21 13 I wanted to talk briefly about the equal
13:41:25 14 protection violation that's alleged essentially and the
13:41:29 15 reason why we are before the federal district court.
13:41:33 16 According to the briefing, equal protection rights are
13:41:38 17 violated because those who are awaiting trial in DOC custody
13:41:42 18 cannot vote while others who are awaiting trial outside of
13:41:47 19 DOC custody can vote. The difference, according to the
13:41:52 20 plaintiff, is that between those two groups of individuals
13:41:55 21 there's an invalid wealth classification because the people
13:41:58 22 who are incarcerated cannot post bail. The argument also
13:42:02 23 flawed for two reasons. It assumes that the only factor is
13:42:08 24 wealth and that's why they're incarcerated. That's not what
13:42:12 25 the bail analysis requires under Delaware law. Two of the

13:42:17 1 most important factors under Delaware law is safety of the
13:42:22 2 community and risk of flight. None of the factors deal with
13:42:26 3 wealth.

13:42:27 4 And also the second reason that it's flawed is a
13:42:32 5 court's bail analysis has nothing to do with the Department
13:42:36 6 of Elections' policies. To the extent there is some
13:42:43 7 differentiation based on wealth, which is not agreed, but to
13:42:48 8 that extent, it's not because of DOE policies, it's, if
13:42:51 9 anything, based on the bail analysis, which again, we don't
13:42:56 10 agree to. So from the defendant's perspective, there is no
13:42:59 11 equal rights violation, there is no differentiation between
13:43:06 12 any group of people and for that reason the likelihood of
13:43:12 13 success on the merits of the equal protection argument would
13:43:16 14 not survive.

13:43:18 15 The second factor for the preliminary injunction
13:43:25 16 is irreparable harm. Again, I feel like a record here, they
13:43:31 17 have the right to vote. There is no irreparable harm here.
13:43:35 18 Any threat, again, is not imminent, because this law has
13:43:39 19 been, assuming that we're going to use the *Higgin* case to
13:43:42 20 say that the absentee voting is unconstitutional here, that
13:43:48 21 holding has been in effect for over 50 years and the
13:43:51 22 Department of Elections has been conducting voting this way
13:43:55 23 for over 40 years. There is no imminent threat.

13:44:02 24 And as the Court was questioning earlier, a
13:44:07 25 threat of prosecution, there is also no threat of

13:44:11 1 prosecution. The Court has stated and I think gets that the
13:44:16 2 attorney general certifies these absentee ballots and the
13:44:20 3 attorney general has also written a letter to plaintiff
13:44:23 4 saying we are not going to prosecute here.

13:44:25 5 THE COURT: When was that?

13:44:26 6 MS. KELLY: 2022.

13:44:28 7 THE COURT: Is the attorney general going to
13:44:30 8 prosecute incarcerated people for trying to vote in 2024?

13:44:35 9 MS. KELLY: I don't have a recent letter, but I
13:44:38 10 imagine that -- so to the Court's question, I don't have
13:44:42 11 anything of record, but I cannot imagine the position taken
13:44:47 12 in 2022 would be any different today.

13:44:50 13 THE COURT: So I guess the question is, can --
13:44:54 14 can't the attorney general just tell the Court that?

13:44:56 15 Wouldn't that make this a lot easier? Is there any reason
13:44:59 16 why the attorney general -- not agreeing -- I'm not asking
13:45:03 17 for the attorney general to say I'm never going to prosecute
13:45:07 18 anyone for voter fraud, but I think it's not that big of an
13:45:11 19 ask to say shouldn't we have an official statement that we
13:45:15 20 are not going to prosecute eligible voters, eligible
13:45:22 21 incarcerated voters who try to vote by absentee ballot? I
13:45:32 22 can't imagine how that could be prosecuted. I can't imagine
13:45:35 23 it, but can't we just have you say that you won't try?

13:45:39 24 MS. KELLY: So I'm looking at the letter from
13:45:42 25 from November 2022, and I'm hesitating because it was a

13:45:55 1 letter from the attorney general to Mr. Bensing saying that
13:46:00 2 this office will not prosecute eligible individuals
13:46:03 3 incarcerated in the DDOC facilities for voting or attempting
13:46:07 4 to vote by absentee ballot in the 2022 general election.
13:46:11 5 It's limiting to the 2022 election, but I agree with that
13:46:15 6 that, but I can't imagine that if I made a phone call right
13:46:20 7 now I would be representing anything different. But I
13:46:23 8 certainly, that's not something that I did check before I
13:46:26 9 came in to court.

13:46:27 10 THE COURT: That might be one of those things
13:46:29 11 that if we had that as evidence of record that that may
13:46:32 12 weigh on how the Court moves forward here.

13:46:37 13 Okay.

13:46:42 14 MS. KELLY: Those are all the arguments that I
13:46:45 15 wanted to highlight for the Court. Again, the defendants
13:46:49 16 ask that the Court either abstain or deny the preliminary
13:46:54 17 injunction because plaintiffs have not met their burden
13:46:58 18 here.

13:46:58 19 Thank you, Your Honor.

13:46:59 20 THE COURT: Okay. Thank you very much.

13:47:13 21 MR. BERNSTEIN: Thank you, Your Honor. If I
13:47:15 22 could just address a few points that were made.

13:47:18 23 I would start by saying it was suggested by the
13:47:22 24 defendants that we said this would be an issue better left
13:47:26 25 in state courts. That is not what we said.

13:47:29 1 THE COURT: I understand.

13:47:30 2 MR. BERNSTEIN: Okay. Just to be clear, there
13:47:32 3 was *O'Brien* that said that the state courts are the final
13:47:37 4 arbiters of what state law is.

13:47:38 5 THE COURT: I understand your position.

13:47:40 6 MR. BERNSTEIN: Okay. Understood.

13:47:41 7 So staying on *O'Brien*, the the equal protection
13:47:45 8 claim here, there's also, I think, a mischaracterization of
13:47:48 9 our argument that was made by defendants, in that it is not
13:47:52 10 the fact that individuals have to pay bail that is the issue
13:47:56 11 here, it is the fact that you have two perfectly similarly
13:48:00 12 situated individuals, they're being accused of having
13:48:03 13 committed the same crime, the same factors go into their
13:48:06 14 bail analysis and one has a little more money in its bank
13:48:09 15 account and is able to pay bail and the other one cannot.
13:48:13 16 That under Delaware law one would be allowed to cast --
13:48:17 17 sorry. One would have a constitutional means of casting a
13:48:19 18 ballot and the other would have no means. It is an open and
13:48:22 19 shut violation of *O'Brien*, which stands for the proposition
13:48:25 20 that your physical location as than eligible incarcerated
13:48:29 21 voter can't be what your right to vote turns on.

13:48:33 22 THE COURT: So in *O'Brien* the state law was what
13:48:39 23 it was in terms of who could vote. If the state here is
13:48:44 24 correct that the Delaware constitution doesn't bar
13:48:49 25 incarcerated individuals from casting an absentee ballot,

13:48:52 1 that is dispositive of your equal protection claim, is that
13:48:56 2 right? That claims goes away.

13:48:58 3 MR. BERNSTEIN: Your Honor, the state doesn't
13:49:00 4 get to decide what the Delaware constitution says.

13:49:03 5 THE COURT: But the law is what it is. If the
13:49:06 6 law is -- you are taking as a given that it is illegal for
13:49:10 7 incarcerated people to cast absentee ballots. You are
13:49:14 8 taking that as a given. If that's wrong, though, you have
13:49:17 9 no equal protection claim.

13:49:20 10 MR. BERNSTEIN: Your Honor, while that is the
13:49:25 11 case, it is also very clearly the case under the *Higgin*
13:49:30 12 decision that the Article V Section 4A categories have now
13:49:36 13 been construed such that eligible incarcerated voters are
13:49:41 14 not eligible to cast these absentee ballots.

13:49:43 15 THE COURT: Well, that is an interpretation you
13:49:45 16 have of the *Higgin* decision. The *Higgin* decision was
13:49:48 17 assessing the vote-by-mail statute, not the absentee ballot
13:49:52 18 statute, right?

13:49:53 19 MR. BERNSTEIN: Your Honor, the *Higgin* decision
13:49:58 20 analyzed Article V Section 4A of the Delaware constitution.
13:50:01 21 That was with regard to analyzing whether the vote-by-mail
13:50:05 22 statute was constitutional, but their pronouncement
13:50:08 23 regarding what Article V Section 4A means can't be ignored.
13:50:13 24 It is the state court coming out with a definitive ruling
13:50:17 25 expressing what Article V Section 4A is. The defendants try

13:50:22 1 to cast this as a long-standing holding that was not new,
13:50:26 2 but it certainly was new. If it was understood to be the
13:50:30 3 holding, it certainly caught those who thought the
13:50:34 4 vote-by-mail law was constitutional off guard.

13:50:36 5 THE COURT: Maybe they didn't, but I get what
13:50:38 6 you're saying. But the holding was that you can't cast an
13:50:42 7 absentee ballot unless you've got an excuse by reason of
13:50:46 8 your business or occupation or you're disabled or some other
13:50:50 9 categories, but the Delaware Supreme Court did not assess
13:50:53 10 what it means to be not able to vote based our business or
13:50:58 11 occupation or disabled. It was not construing what those
13:51:02 12 things mean, right, and it never has?

13:51:06 13 MR. BERNSTEIN: It has ruled that those
13:51:09 14 categories are exhaustive, that they cannot be enlarged or
13:51:13 15 expanded upon.

13:51:13 16 THE COURT: Right. Can't be enlarged, but it
13:51:16 17 hasn't ruled on what their scope is, though.

13:51:22 18 MR. BERNSTEIN: Your Honor, I believe that
13:51:26 19 there's not a distinction there. What they've ruled upon is
13:51:31 20 it's the plain meaning of those statutes. Finding any
13:51:35 21 subcategory or any non-enumerated category that falls within
13:51:39 22 those exceptions would be expanding the category.

13:51:43 23 THE COURT: Let me ask you this. Why don't we
13:51:46 24 just ask them, then? Do you have an objection to that?

13:51:49 25 MR. BERNSTEIN: Yes, Your Honor. We've looked

13:51:51 1 into the certification issue. My understanding -- our
13:51:55 2 understanding regarding the certification is that it would
13:51:57 3 be similarly inappropriate here. One very similar factor in
13:52:03 4 the certification analysis to here is the clarity of the law
13:52:06 5 at issue. And here, as we've stated in our brief and for
13:52:10 6 the reason you've read in our briefing, we do not believe
13:52:13 7 that there is an uncertain issue of state law here. There
13:52:16 8 are judicial economy concerns, they're the same concerns
13:52:19 9 regarding the immediacy of the election. All of those
13:52:23 10 considerations weigh against certification here. And it
13:52:26 11 also is similar to abstention and similar to what I was
13:52:33 12 talking about in *O'Brien* previously, asking the state court
13:52:36 13 to reiterate what they've already said. We've --

13:52:40 14 THE COURT: Yeah. No, I didn't mean to
13:52:41 15 interrupt you. It is sort of an ironic position that you're
13:52:46 16 in, where the right that you're asserting is the right to
13:52:50 17 vote and the state says nobody is being denied it and you
13:52:53 18 think it's so clear you have been denied it that you don't
13:52:56 19 want me to ask the Delaware Supreme Court to confirm that.
13:52:59 20 There's sort of an irony in that, but you don't have to
13:53:02 21 comment on it if you don't want to.

13:53:05 22 MR. BERNSTEIN: Your Honor, I would just add to
13:53:11 23 the -- what is happening here is that our -- the people who
13:53:14 24 are incarcerated who wish to vote who have the *Higgin*
13:53:19 25 opinion and can see Delaware laws about challenges to

13:53:24 1 absentee ballots to prosecutions, they're being asked to
13:53:28 2 shoulder a very severe burden if they want to try to
13:53:31 3 exercise the right to vote through the mechanism given to
13:53:33 4 them by the State. In the interest of giving them clarity
13:53:36 5 as soon as possible, abstention is an appropriate -- as
13:53:41 6 you've said, Your Honor, there's nothing going on in the
13:53:44 7 state courts that would -- that indicates that there is any
13:53:50 8 uncertainty here. And additionally, those voters need
13:53:58 9 clarity as soon as possible.

13:54:01 10 I would also just like to, on the *Anderson*
13:54:04 11 verdict analysis and address some points that were made by
13:54:09 12 defendants. Defendants cited a \$1 million cost estimate.
13:54:12 13 My understanding is that cost estimate was made with early
13:54:16 14 voting baked in and as it currently stands, there is no
13:54:20 15 early voting in Delaware. If my understanding of the cost
13:54:23 16 is correct, over 75% of the costs were solely attributable
13:54:28 17 to the days the polling places would have to be open during
13:54:31 18 early voting, based on my understanding of what the state
13:54:34 19 put forward. That would bring the administrative burden
13:54:38 20 down, by my understanding of defendants math, to around
13:54:42 21 \$140,000. This is a minimal administrative burden and under
13:54:47 22 the *Anderson* verdict analysis, far more substantial
13:54:50 23 administrative costs and burdens have been ordered by courts
13:54:54 24 in cases where there's a total denial of the right to vote
13:54:57 25 as there is here. There are also speculative concerns

13:55:00 1 raised by the State in the briefing regarding the burden
13:55:03 2 under Anderson verdict. And the *Padilla* case, which we
13:55:07 3 cite, makes it clear that the speculative concerns are
13:55:10 4 certainly not enough. And in particular, speculative
13:55:13 5 concern I'm responding to here is the concern of poll worker
13:55:18 6 recruitment. The State, in the declaration of Commissioner
13:55:25 7 Albence, spoke about anticipation of difficulty recruiting
13:55:28 8 pole workers. That is pure speculation at this point,
13:55:30 9 especially in a scenario without early voting whether there
13:55:34 10 would be more poll workers to go around presumably.

13:55:39 11 I would like to round this out, Your Honor, just
13:55:43 12 by reiterating that what the State is currently offering to
13:55:49 13 eligible incarcerated voters doesn't mean anything if it
13:55:52 14 contradicts the plain language of the state supreme court
13:55:55 15 holding. The state supreme court has the authority to say
13:55:59 16 what the law is and any Delaware voter who is incarcerated
13:56:04 17 who is given an absentee ballot and put in a position where
13:56:07 18 they have to understand that they are checking a box that
13:56:11 19 says my incarceration is a business or occupation,
13:56:15 20 considering that and considering the *Higgin* opinion and
13:56:18 21 considering the applicable criminal statutes, it is clear
13:56:21 22 that their right to vote is severely burdened, that they are
13:56:25 23 facing a chilling effect due to the fact that their vote
13:56:30 24 might not get counted, the fact that they might have their
13:56:34 25 vote challenged, the fact prosecution is even a possibility.

13:56:37 1 Thank you, Your Honor.

13:56:38 2 THE COURT: Thank you very much.

13:56:46 3 All right. Before I leave the bench there's

13:56:48 4 just a couple comments I had.

13:56:50 5 The first is that I have a real concern that the
13:56:59 6 plaintiff lacks standing, not because it doesn't have a
13:57:05 7 member that wants to vote. I'm going to assume for purposes
13:57:08 8 of the analysis that that's true. I have concern about the
13:57:14 9 imminent injury requirement and I have a concern about the
13:57:18 10 redressability requirement and I have a concern about
13:57:24 11 ripeness.

13:57:24 12 Those are my main concerns.

13:57:26 13 And I know that wasn't raised by the state, but
13:57:30 14 because these things go to the Court's subject matter
13:57:34 15 jurisdiction, I think I have an obligation to raise them if
13:57:37 16 I think there's a question. And so in all likelihood, I
13:57:43 17 will be asking for supplemental briefing on the issue of
13:57:46 18 constitutional standing. We had some discussion today about
13:57:59 19 whether it's clear as a matter of Delaware state law that
13:58:04 20 prisoner absentee voting violates the Delaware constitution.
13:58:13 21 And I was certainly hearing from the plaintiff that it's
13:58:18 22 clear that it's not allowed, but I was hearing from the
13:58:23 23 defendants that they have interpreted it as being permitted.
13:58:27 24 And so it's hard to say in this type of a situation that it
13:58:31 25 isn't ambiguous, and so one possibility, when the federal

13:58:35 1 court is confronted with a situation is to certify the
13:58:39 2 question for the state supreme court. So if the parties are
13:58:46 3 asked and we'll think about whether or not that's something
13:58:48 4 we want to hear from the parties about, we may ask to have
13:58:52 5 you meet and confer, if we determine that there is standing,
13:58:55 6 about what question we might certify to the Delaware supreme
13:58:59 7 court. And we can ask for that on an expedited basis.

13:59:08 8 The other comment I wanted to make was that
13:59:13 9 these concepts are really very challenging and I was so
13:59:17 10 impressed with the skill of counsel in their arguments today
13:59:21 11 in making it clear for the Court. Everyone was very very
13:59:25 12 well prepared. It's a pleasure hearing from all of you and
13:59:29 13 seeing familiar faces. I hope everybody has a great
13:59:32 14 weekend.

13:59:35 15 COURT CLERK: All rise.

13:59:37 16 (Court adjourned at 1:59 p.m.)

17

18

19

20

I hereby certify the foregoing is a true and
21 accurate transcript from my stenographic notes in the
proceedings.

22

23

/s/ Stacy M. Ingram, RPR
Official Court Reporter
U.S. District Court

24

25

\$	7	16:4 assume [1] - 38:7 assumes [1] - 28:23 assuming [2] - 21:1, 29:19 attached [1] - 27:17 attempt [2] - 16:20, 27:21 attempting [1] - 31:3 attorney [19] - 9:2, 9:10, 9:21, 10:12, 10:16, 10:17, 10:24, 11:3, 16:18, 27:18, 27:22, 27:24, 30:2, 30:3, 30:7, 30:14, 30:16, 30:17, 31:1 attributable [1] - 36:16 authority [1] - 37:15 avenue [1] - 26:18 awaiting [2] - 28:17, 28:18 award [2] - 19:15, 20:15 aware [8] - 10:21, 11:2, 24:2, 24:13, 24:15, 25:9, 26:7, 26:23 B background [1] - 18:5 bail [8] - 20:18, 28:22, 28:25, 29:5, 29:9, 32:10, 32:14, 32:15 baked [1] - 36:14 balancing [1] - 5:23 ballot [38] - 4:13, 6:22, 9:3, 9:25, 10:2, 10:4, 10:11, 10:15, 10:17, 11:7, 11:8, 11:10, 11:13, 11:15, 11:16, 11:21, 11:22, 12:1, 12:3, 12:4, 14:20, 18:14, 18:17, 18:23, 21:5, 22:20, 23:12, 23:16, 23:22, 24:14, 30:21, 31:4, 32:18, 32:25, 33:17, 34:7, 37:17 ballots [23] - 4:4, 4:10, 4:14, 4:21, 6:16, 8:2, 8:14, 9:22, 11:10, 11:12, 12:6, 13:16, 13:18, 15:4, 15:10, 17:6, 20:1, 21:10, 27:20, 30:2, 33:7, 33:14,
\$140,000 [1] - 36:21	7 [1] - 8:23 75% [1] - 36:16	32:15 accurate [1] - 39:21 accused [1] - 32:12 acknowledge [1] - 4:8 ACLU [2] - 1:22, 2:23 act [2] - 8:25, 10:19 action [1] - 2:18 actual [1] - 11:23 add [4] - 3:10, 15:22, 15:24, 35:22 additional [2] - 12:23, 22:3 additionally [1] - 36:8 address [4] - 13:19, 13:20, 31:22, 36:11 addressed [1] - 15:24 adjourned [1] - 39:16 administrative [3] - 36:19, 36:21, 36:23 adopted [1] - 22:6 advancing [1] - 3:25 advantage [1] - 13:10 ADVOCACY [1] - 1:4 Advocacy [2] - 2:18, 3:24 affidavit [4] - 27:16, 27:18, 27:23, 27:24 afternoon [4] - 2:22, 2:25, 3:2, 17:24 agencies [1] - 18:21 agency [1] - 25:6 agree [3] - 25:12, 29:10, 31:5 agreed [3] - 13:15, 19:21, 29:7 agreeing [1] - 30:16 agrees [1] - 18:25 ahead [2] - 2:20, 5:9 al [2] - 1:7, 2:18 Albence [5] - 18:11, 21:14, 21:20, 23:5, 37:7 Albence's [1] - 19:13 alleged [2] - 15:8, 28:14 allow [1] - 25:10 allowed [5] - 9:17, 16:14, 23:11, 32:16, 38:22 allowing [1] - 9:19 allows [1] - 24:4 ambiguous [1] - 38:25 amending [1] - 21:24 amendment [1] - 22:4 analysis [9] - 5:21, 28:25, 29:5, 29:9, 32:14, 35:4, 36:11, 36:22, 38:8 analyzed [1] - 33:20 analyzing [1] - 33:21 Anderson [6] - 5:20, 5:22, 28:3, 36:10, 36:22, 37:2 ANDREW [1] - 1:23 Andrew [1] - 2:23 answer [1] - 12:9 answered [1] - 20:22 anticipation [1] - 37:7 anyway [1] - 9:14 apologies [1] - 14:13 appearances [1] - 2:20 APPEARANCES [2] - 1:19, 2:1 applicable [1] - 37:21 application [2] - 10:16, 16:21 applied [1] - 27:4 applies [3] - 5:15, 5:21, 24:3 apply [2] - 10:6, 28:9 applying [1] - 9:3 appreciate [3] - 14:24, 16:8, 20:24 approaching [1] - 3:22 appropriate [2] - 27:3, 36:5 approved [1] - 10:17 April [1] - 1:10 arbiter [1] - 15:14 arbiters [1] - 32:4 argue [2] - 21:16, 22:8 argument [14] - 2:16, 5:8, 9:18, 12:23, 16:12, 19:19, 22:9, 23:3, 24:5, 26:10, 27:14, 28:22, 29:13, 32:9 arguments [4] - 3:9, 3:10, 31:14, 39:10 article [1] - 4:11 Article [8] - 4:13, 6:18, 7:5, 14:4, 33:12, 33:20, 33:23, 33:25 aspect [1] - 16:16 asserting [1] - 35:16 assertion [1] - 27:22 asserts [1] - 16:2 assess [1] - 34:9 assessing [1] - 33:17 assist [1] - 4:4 association [2] - 8:11, 16:6 associational [1] -
/	8	
/s [1] - 39:23	844 [1] - 1:13	
1	9	
1 [2] - 19:15, 36:12 1% [1] - 14:23 1,000 [1] - 4:5 1093 [1] - 22:5 1094 [1] - 22:5 15 [2] - 8:19, 11:11 19 [1] - 1:10 1972 [2] - 22:6, 22:7 1:00 [1] - 1:11 1:59 [1] - 39:16	A	
2		
2018 [2] - 18:17, 18:20 2022 [9] - 21:18, 21:21, 22:7, 22:10, 30:6, 30:12, 30:25, 31:4, 31:5 2024 [3] - 1:10, 4:3, 30:8 2025 [1] - 3:22 23-1397 [1] - 2:19 23-1397-JLH [1] - 1:5		
4		
40 [2] - 18:12, 29:23 4A [10] - 4:11, 4:13, 6:19, 7:5, 14:4, 22:2, 33:12, 33:20, 33:23, 33:25		
5		
5 [2] - 7:5, 14:4 50 [1] - 29:21 502 [1] - 22:22 5128 [1] - 8:19 5513 [1] - 11:11		
6		
6C [2] - 1:11, 2:13 6D [1] - 2:14		

<p>36:1 bank [1] - 32:14 bar [1] - 32:24 barred [1] - 19:21 based [5] - 22:12, 29:7, 29:9, 34:10, 36:18 basis [2] - 11:9, 39:7 became [2] - 18:17, 21:19 BEFORE [1] - 1:16 beginning [1] - 4:17 behalf [3] - 2:23, 3:3, 17:25 bench [1] - 38:3 Bensing [1] - 31:1 BENSING [1] - 1:22 Bernstein [1] - 2:23 BERNSTEIN [39] - 1:23, 2:22, 3:13, 3:18, 4:16, 4:19, 5:11, 5:19, 6:11, 6:17, 7:3, 7:24, 8:8, 8:13, 8:18, 8:23, 9:7, 9:24, 10:20, 11:19, 12:11, 12:16, 13:19, 13:23, 15:23, 16:25, 17:12, 17:18, 17:23, 31:21, 32:2, 32:6, 33:3, 33:10, 33:19, 34:13, 34:18, 34:25, 35:22 better [3] - 3:18, 11:20, 31:24 between [3] - 26:8, 28:20, 29:11 big [1] - 30:18 bit [2] - 2:15, 18:5 books [1] - 10:6 box [3] - 10:18, 16:21, 37:18 branch [1] - 23:20 brief [3] - 27:3, 27:18, 35:5 briefing [6] - 14:18, 15:24, 28:16, 35:6, 37:1, 38:17 briefings [1] - 3:10 briefly [2] - 15:25, 28:13 bring [1] - 36:19 bringing [1] - 16:8 brought [2] - 11:9, 16:1 burden [13] - 6:1, 6:4, 6:8, 11:2, 11:4, 28:6, 28:8, 28:12, 31:17, 36:2, 36:19</p>	<p>36:21, 37:1 burdened [1] - 37:22 burdens [1] - 36:23 business [9] - 7:8, 7:20, 18:16, 18:18, 23:23, 25:14, 34:8, 34:10, 37:19 BY [4] - 1:22, 1:23, 2:3, 2:3</p>	<p>35:1, 35:2, 35:4, 35:10 certified [2] - 25:23, 25:24 certifies [1] - 30:2 certify [3] - 39:1, 39:6, 39:20 cetera [1] - 21:24 challenge [5] - 11:7, 11:17, 11:21, 25:3, 25:4 challenged [6] - 11:10, 11:12, 11:13, 11:16, 12:1, 37:25 challenges [7] - 7:25, 8:2, 8:14, 11:8, 12:2, 25:9, 35:25 challenging [4] - 23:5, 24:12, 24:13, 39:9 chance [2] - 3:9, 24:22 chancery [2] - 26:17, 26:19 changed [1] - 17:4 character [1] - 5:24 charged [2] - 8:12, 9:9 check [3] - 10:18, 16:21, 31:8 checking [1] - 37:18 chilling [3] - 8:4, 11:5, 37:23 Circuit [1] - 5:25 cite [2] - 27:5, 37:3 cited [2] - 14:18, 36:12 citizens [1] - 4:8 City [1] - 27:6 civil [2] - 2:18, 27:7 claim [5] - 5:14, 5:22, 32:8, 33:1, 33:9 claims [1] - 33:2 clarification [2] - 3:17, 4:15 categories [15] - 6:19, 6:24, 7:1, 7:5, 7:15, 14:6, 14:7, 14:8, 14:11, 22:1, 22:3, 23:11, 33:12, 34:9, 34:14 casting [6] - 4:4, 12:2, 12:4, 12:6, 32:17, 32:25 catalyst [1] - 21:15 clarity [3] - 35:4, 36:4, 36:9 classification [1] - 28:21 Clause [1] - 4:24 clear [14] - 4:10, 5:14, 14:16, 16:2, 16:7, 19:14, 27:11, 32:2, 35:18, 37:3, 37:21, 38:19, 38:22, 39:11 clearly [1] - 33:11 CLERK [2] - 2:9, 39:15 client [1] - 14:14 certification [4] -</p>	<p>code [1] - 7:10 Code [1] - 8:19 coming [3] - 17:10, 17:15, 33:24 comment [3] - 13:8, 35:21, 39:8 comments [2] - 14:24, 38:4 commissioner [2] - 18:9, 18:10 Commissioner [3] - 18:11, 19:13, 37:6 commissioners [1] - 18:21 committed [1] - 32:13 common [2] - 7:12, 14:9 community [1] - 29:2 complaint [1] - 12:13 comply [1] - 15:18 composed [1] - 4:1 comprehensive [1] - 4:12 conceded [1] - 24:6 concepts [1] - 39:9 concern [8] - 27:22, 27:23, 37:5, 38:5, 38:8, 38:9, 38:10 concerns [7] - 16:1, 27:20, 35:8, 36:25, 37:3, 38:12 conduct [1] - 9:4 conducting [1] - 29:22 confer [1] - 39:5 confirm [2] - 18:21, 35:19 confronted [1] - 39:1 confusing [1] - 11:21 confusion [1] - 17:7 conjunction [1] - 23:1 consider [1] - 26:24 considerations [1] - 35:10 considered [1] - 7:11 considering [4] - 21:17, 37:20, 37:21 constitute [2] - 4:22, 6:4 constitutes [1] - 4:24 constitution [17] - 10:5, 15:18, 15:20, 18:16, 19:24, 21:4, 21:7, 21:22, 21:23, 23:10, 23:18, 25:5, 25:13, 32:24, 33:4, 33:20, 38:20 Constitution [1] -</p>	<p>4:11 constitutional [15] - 7:1, 12:18, 15:8, 17:21, 20:1, 21:1, 21:3, 22:4, 24:9, 25:8, 26:16, 32:17, 33:22, 34:4, 38:18 constitutionality [2] - 20:14, 26:20 construction [1] - 14:4 construe [1] - 14:3 construed [1] - 33:13 construing [1] - 34:11 contest [1] - 11:8 continue [1] - 10:25 CONTINUED [1] - 2:1 continued [1] - 18:20 contradicts [1] - 37:14 convicted [3] - 13:12, 19:5, 19:11 conviction [1] - 19:2 convictions [1] - 4:6 convoluted [1] - 20:24 Cook [1] - 13:4 copy [1] - 8:20 correct [6] - 19:10, 22:18, 23:14, 23:25, 32:24, 36:16 Correction [1] - 12:19 corrections [1] - 18:10 corrective [1] - 17:20 cost [6] - 15:3, 19:16, 36:12, 36:13, 36:15 costs [2] - 36:16, 36:23 counsel [2] - 3:4, 39:10 Counsel [2] - 1:24, 2:4 counted [1] - 37:24 country [2] - 8:4, 9:12 County [1] - 13:4 couple [2] - 20:10, 38:4 court [28] - 13:25, 14:5, 14:21, 15:10, 15:14, 18:4, 19:25, 21:16, 21:17, 21:20, 21:25, 22:11, 23:6, 24:21, 24:22, 26:14, 26:18, 26:19, 28:15, 31:9, 33:24, 35:12, 37:14, 37:15, 39:1, 39:2, 39:7</p>
--	--	---	--	--

COURT [67] - 1:1, 2:9, 2:12, 2:25, 3:6, 4:18, 5:9, 5:17, 6:5, 6:13, 6:23, 7:16, 8:6, 8:10, 8:16, 8:21, 8:24, 9:15, 10:12, 11:14, 11:25, 12:12, 13:8, 13:22, 14:24, 15:12, 15:21, 16:8, 17:8, 17:16, 17:22, 18:25, 19:5, 19:8, 19:20, 20:4, 20:23, 22:15, 22:19, 22:22, 23:8, 23:15, 24:11, 24:17, 25:12, 25:18, 25:22, 25:24, 26:1, 26:9, 26:22, 30:5, 30:7, 30:13, 31:10, 31:20, 32:1, 32:5, 32:22, 33:5, 33:15, 34:5, 34:16, 34:23, 35:14, 38:2, 39:15 Court [46] - 1:17, 2:10, 3:14, 3:17, 4:15, 5:3, 5:14, 6:2, 6:14, 13:14, 14:1, 15:2, 15:4, 15:7, 15:8, 15:13, 15:16, 16:11, 17:17, 18:1, 18:6, 19:15, 20:13, 21:9, 21:12, 23:10, 24:2, 24:7, 24:10, 25:13, 26:18, 26:23, 27:9, 27:11, 29:24, 30:1, 30:14, 31:12, 31:15, 31:16, 34:9, 35:19, 39:11, 39:16, 39:23, 39:24 court's [1] - 29:5 Court's [4] - 15:19, 20:22, 30:10, 38:14 Courtroom [1] - 1:11 courtroom [2] - 2:13, 2:14 courtrooms [1] - 2:15 courts [5] - 24:4, 31:25, 32:3, 36:7, 36:23 created [1] - 8:4 crime [1] - 32:13 criminal [1] - 37:21 criminalization [1] - 8:3 current [1] - 17:13 custody [2] - 28:17, 28:19 cut [1] - 13:14 cutting [1] - 14:14	CY [1] - 27:5	37:16, 38:19, 38:20, 39:6 D	18:12 Elections' [1] - 29:6 element [1] - 8:21 elements [1] - 26:24 eligibility [2] - 9:25, 11:22 eligible [26] - 4:12, 4:14, 9:16, 9:17, 10:2, 13:5, 13:25, 14:15, 14:19, 18:13, 18:19, 18:22, 18:25, 19:4, 19:12, 22:20, 23:20, 28:2, 30:20, 31:2, 32:20, 33:13, 33:14, 37:13 enacted [1] - 21:18 end [2] - 7:16, 11:24 enlarged [4] - 6:19, 14:7, 34:14, 34:16 entire [2] - 13:20, 21:22 enumerated [4] - 7:4, 7:6, 22:2, 34:21 Equal [1] - 4:23 equal [8] - 5:15, 28:13, 28:16, 29:11, 29:13, 32:7, 33:1, 33:9 escorted [1] - 20:19 especially [1] - 37:9 ESQ [4] - 1:22, 1:23, 2:3, 2:3 essentially [2] - 18:18, 28:14 estimate [2] - 36:12, 36:13 estopped [1] - 16:5 et [3] - 1:7, 2:18, 21:24 evidence [3] - 27:16, 27:25, 31:11 exactly [2] - 23:9, 23:17 example [1] - 13:4 examples [1] - 7:9 exception [7] - 7:9, 7:20, 18:15, 18:16, 23:23, 23:24, 27:8 exceptions [2] - 7:7, 34:22 excluded [1] - 22:3 excuse [2] - 6:21, 34:7 executive [1] - 23:20 exercise [1] - 36:3 exhaustive [3] - 6:19, 22:2, 34:14 expand [1] - 7:15
	DEPARTMENT [1] - 2:2 department's [3] - 25:4, 25:5, 25:10 designee [1] - 10:13 detainees [4] - 13:11, 13:16, 19:11, 19:22 detention [1] - 4:6 determination [2] - 15:16, 15:17 determine [2] - 26:20, 39:5 determined [1] - 21:25 determining [1] - 15:3 Development [1] - 27:6 difference [1] - 28:19 different [4] - 9:23, 22:16, 30:12, 31:7 differentiation [2] - 29:7, 29:11 differently [1] - 14:3 difficulty [1] - 37:7 direct [1] - 27:17 disability [2] - 18:15, 23:23 disabled [2] - 34:8, 34:11 disagree [5] - 9:8, 17:18, 20:6, 20:7, 20:8 discrimination [1] - 4:23 discussed [1] - 28:4 discussion [2] - 26:7, 38:18 disenfranchised [1] - 3:21	E	early [4] - 36:13, 36:15, 36:18, 37:9 easier [1] - 30:15 economy [1] - 35:8 educate [2] - 18:22 effect [7] - 7:25, 8:4, 11:5, 14:19, 27:17, 29:21, 37:23 either [5] - 18:14, 18:15, 23:22, 26:6, 31:16 election [7] - 3:22, 13:13, 19:16, 28:11, 31:4, 31:5, 35:9 Election [1] - 26:21 Elections [2] - 23:1, 29:22 elections [3] - 18:9,

expanded [3] - 6:20, 14:6, 34:15 expanding [2] - 7:4, 34:22 expedited [1] - 39:7 explain [1] - 9:5 explaining [1] - 17:13 explored [4] - 20:20, 20:21, 26:6 expressing [1] - 33:25 expressly [1] - 23:19 extends [1] - 10:7 extent [7] - 10:20, 11:12, 11:15, 15:25, 27:8, 29:6, 29:8 extrapolated [1] - 21:21	15:17, 27:1, 32:3 first [7] - 8:17, 20:8, 20:12, 20:13, 24:16, 38:5 fit [1] - 7:6 fitting [1] - 9:4 five [1] - 12:24 flawed [2] - 28:23, 29:4 flexible [1] - 28:5 flight [1] - 29:2 focus [1] - 20:11 focused [1] - 22:1 follow [1] - 14:5 FOR [1] - 1:1 force [1] - 5:15 foregoing [1] - 39:20 form [1] - 12:4 forward [5] - 5:1, 5:23, 5:25, 31:12, 36:19 framework [2] - 5:21, 5:22 Frank [1] - 14:17 fraud [1] - 30:18 fraudulent [1] - 8:19 fraudulently [2] - 8:24, 10:14 free [1] - 27:11 Friday [1] - 1:10 full [1] - 21:24 function [2] - 14:3, 17:3 fundamental [5] - 3:21, 4:22, 5:15, 5:21, 14:22 furthermore [1] - 7:13	21:10, 29:12 groups [1] - 28:20 guarantee [1] - 17:21 guard [1] - 34:4 guess [6] - 6:5, 12:1, 12:9, 14:25, 24:17, 30:13	17:12, 17:18, 17:24, 18:1, 19:3, 19:10, 22:25, 24:1, 24:15, 25:21, 31:19, 31:21, 33:3, 33:10, 33:19, 34:18, 34:25, 35:22, 36:6, 37:11, 38:1 HONORABLE [1] - 1:16 Honorable [1] - 2:11 hope [2] - 20:22, 39:13 hundred [1] - 25:17	incarceration [2] - 7:6, 37:19 inclined [1] - 27:9 include [2] - 4:13, 23:22 included [2] - 14:20, 18:19 includes [1] - 25:14 including [2] - 4:7, 15:10 increasing [2] - 8:1, 8:3 indicates [1] - 36:7 indication [1] - 6:14 indications [2] - 16:20, 16:23 individual [1] - 14:17 individuals [10] - 5:16, 10:1, 13:4, 17:4, 24:14, 28:20, 31:2, 32:10, 32:12, 32:25 ineligible [1] - 10:10 infringement [2] - 5:24, 5:25 Ingram [1] - 39:23 junction [9] - 2:17, 5:4, 5:13, 18:3, 22:12, 26:19, 27:13, 29:15, 31:17 injury [4] - 4:25, 16:17, 17:16, 38:9 instance [1] - 15:14 instances [3] - 6:3, 9:12, 13:3 interest [5] - 4:25, 5:1, 5:23, 28:10, 36:4 interests [1] - 15:2 interpretation [2] - 25:5, 33:15 interpreted [2] - 23:21, 38:23 interrupt [1] - 35:15 invalid [1] - 28:21 ironic [1] - 35:15 irony [1] - 35:20 irreparable [3] - 4:25, 29:16, 29:17 issue [14] - 9:24, 12:18, 16:4, 20:9, 22:24, 23:4, 24:6, 24:9, 31:24, 32:10, 35:1, 35:5, 35:7, 38:17 issues [1] - 24:4 itself [1] - 7:7
F	face [1] - 27:21 faces [2] - 3:7, 39:13 facilities [3] - 12:20, 13:1, 31:3 facility [3] - 12:24, 23:13, 27:19 facing [3] - 4:7, 4:21, 37:23 fact [6] - 28:1, 32:10, 32:11, 37:23, 37:24, 37:25 factor [3] - 28:23, 29:15, 35:3 factors [4] - 26:24, 29:1, 29:2, 32:13 facts [1] - 18:8 factual [1] - 18:5 fair [1] - 23:24 fall [1] - 7:19 Fallon [1] - 2:13 falls [2] - 6:25, 34:21 familiar [3] - 3:7, 11:18, 39:13 far [1] - 36:22 fear [1] - 10:8 fears [1] - 10:4 federal [6] - 15:10, 19:25, 22:11, 24:21, 28:15, 38:25 federalism [1] - 24:3 felony [1] - 19:5 few [1] - 31:22 field [1] - 5:7 fight [1] - 24:25 figure [1] - 11:15 file [1] - 6:16 filings [1] - 12:22 final [4] - 15:14,	general [17] - 3:22, 9:2, 9:10, 9:21, 10:12, 10:17, 10:24, 11:3, 16:19, 30:2, 30:3, 30:7, 30:14, 30:16, 30:17, 31:1, 31:4 given [8] - 14:8, 15:4, 16:18, 25:8, 33:6, 33:8, 36:3, 37:17 government [1] - 23:21 grant [1] - 5:3 granted [1] - 28:7 great [2] - 14:18, 39:13 greater [1] - 5:1 group [3] - 20:15,	highlight [2] - 18:8, 31:15 himself [1] - 8:25 historical [1] - 14:10 history [1] - 21:22 hold [1] - 21:9 holding [11] - 22:1, 22:5, 22:7, 22:10, 22:13, 29:21, 34:1, 34:3, 34:6, 37:15 holdings [2] - 20:10 Honor [45] - 2:22, 3:2, 3:13, 3:15, 3:19, 5:7, 5:11, 6:11, 6:17, 7:3, 7:24, 8:8, 8:13, 8:18, 9:7, 9:24, 10:20, 12:11, 12:16, 13:19, 14:12, 15:13, 15:23, 16:25,	inappropriate [1] - 35:3 incarcerated [39] - 4:1, 4:2, 4:13, 5:5, 5:16, 6:21, 7:10, 10:1, 10:3, 10:10, 10:18, 12:5, 13:3, 13:6, 17:4, 18:13, 18:20, 18:23, 19:1, 19:4, 19:12, 19:22, 23:19, 24:14, 25:15, 28:1, 28:2, 28:22, 28:24, 30:8, 30:21, 31:3, 32:20, 32:25, 33:7, 33:13, 35:24, 37:13, 37:16

J	larger [1] - 13:2 last [1] - 12:22 law [26] - 4:10, 9:20, 9:23, 13:15, 14:16, 15:15, 22:12, 23:16, 24:4, 24:23, 25:24, 26:12, 27:11, 28:25, 29:1, 29:18, 32:4, 32:16, 32:22, 33:5, 33:6, 34:4, 35:4, 35:7, 37:16, 38:19 laws [4] - 14:1, 14:3, 23:12, 35:25 lawsuit [1] - 21:20 lawyers [5] - 4:3, 10:8, 10:21, 11:4, 17:1 least [2] - 12:25, 16:23 leave [1] - 38:3 left [1] - 31:24 LEGAL [1] - 1:3 Legal [2] - 2:18, 3:23 legal [1] - 4:2 legislature [2] - 23:12, 23:15 legitimate [1] - 28:10 lesser [1] - 28:9 letter [4] - 30:3, 30:9, 30:24, 31:1 lifted [1] - 22:7 likelihood [4] - 5:12, 27:14, 29:12, 38:16 likely [1] - 4:6 limit [1] - 11:9 limiting [1] - 31:5 list [3] - 4:12, 23:17, 23:18 location [1] - 32:20 locations [1] - 13:5 long-standing [1] - 34:1 look [2] - 3:8, 20:13 looked [4] - 11:14, 21:20, 21:21, 34:25 looking [1] - 30:24 losing [1] - 3:20 LYNN [1] - 2:3 Lynn [2] - 3:2, 17:25	main [1] - 38:12 mandate [1] - 5:4 Manella [1] - 23:5 math [1] - 36:20 matter [7] - 5:19, 5:20, 9:10, 13:15, 16:1, 38:14, 38:19 Mazzo [1] - 6:1 mean [6] - 19:4, 24:23, 26:1, 34:12, 35:14, 37:13 meaning [1] - 34:20 means [6] - 15:9, 24:23, 32:17, 32:18, 33:23, 34:10 mechanics [1] - 11:23 mechanism [2] - 17:21, 36:3 mechanisms [1] - 13:2 meet [1] - 39:5 member [2] - 27:16, 38:7 members [7] - 4:7, 8:11, 11:1, 16:5, 16:12, 27:19, 27:23 mentions [1] - 27:3 merits [4] - 5:12, 27:14, 27:15, 29:13 messaging [1] - 17:20 met [2] - 16:18, 31:17 method [1] - 25:19 might [9] - 10:9, 11:2, 17:14, 26:2, 26:3, 31:10, 37:24, 39:6 million [3] - 19:15, 28:11, 36:12 mind [1] - 12:17 minimal [2] - 28:12, 36:21 mischaracterization [1] - 32:8 misdemeanor [4] - 4:6, 13:12, 19:11, 19:22 misunderstood [1] - 24:8 moment [1] - 25:3 money [1] - 32:14 most [4] - 3:15, 3:19, 3:20, 29:1 motion [4] - 2:17, 5:4, 12:13, 18:2 movant [1] - 3:12 moves [1] - 31:12 MR [38] - 2:22, 3:13, 3:18, 4:16, 4:19, 5:11, 5:19, 6:11, 33:21, 34:4	objection [1] - 34:24 obligated [2] - 14:5, 14:21 obligation [1] - 38:15 occupation [9] - 7:9, 7:20, 18:16, 18:18, 23:23, 25:14, 34:8, 34:11, 37:19 occurred [1] - 15:16 OF [3] - 1:1, 1:22, 2:2 offending [1] - 4:21 offer [1] - 4:9 offered [1] - 4:20 offering [1] - 37:12 office [1] - 31:2 official [2] - 6:15, 30:19 Official [1] - 39:23 officials [1] - 9:13 one [14] - 6:25, 8:14, 8:16, 9:25, 10:23, 20:10, 26:2, 31:10, 32:14, 32:15, 32:16, 32:17, 35:3, 38:25 ongoing [2] - 23:6, 25:9 open [2] - 32:18, 36:17 opinion [7] - 7:14, 14:2, 21:21, 21:25, 22:6, 35:25, 37:20 opportunities [1] - 5:5 opportunity [4] - 8:25, 12:7, 12:17, 16:23 opposition [1] - 18:2 option [4] - 4:20, 20:17, 26:5 options [1] - 20:20 oral [1] - 2:16 order [8] - 13:17, 15:4, 15:7, 15:11, 18:3, 19:25, 20:5, 21:3 ordered [1] - 36:23 ordering [2] - 13:14, 15:9 orders [1] - 15:4 organization [3] - 3:24, 11:1, 27:16 organizational [1] - 16:3 otherwise [3] - 5:8, 18:19, 23:20 outside [1] - 28:18 outweighs [1] - 28:12
K	KELLY [27] - 2:3, 3:2, 17:24, 19:3, 19:7, 19:10, 20:3, 20:7, 21:9, 22:18, 22:21, 22:23, 23:14, 23:25, 24:15, 25:2, 25:17, 25:20, 25:23, 25:25, 26:5, 26:17, 26:23, 30:6, 30:9, 30:24, 31:14 Kelly [2] - 3:3, 17:25 KENNETH [1] - 2:3 Kenneth [1] - 3:4 kind [4] - 11:5, 17:19, 21:14, 24:20 King [1] - 1:13 knowing [1] - 10:5 knowingly [3] - 8:24, 10:14, 10:19 knowledge [3] - 7:24, 8:8, 26:11	need [3] - 17:19, 22:9, 36:8 needs [1] - 26:24 Network [2] - 2:18, 3:24 NETWORK [1] - 1:4 never [4] - 20:20, 20:21, 30:17, 34:12 new [5] - 21:18, 22:7, 22:10, 34:1, 34:2 next [1] - 2:14 nobody [1] - 35:17 non [1] - 34:21 non-enumerated [1] - 34:21 none [2] - 14:7, 29:2 note [2] - 22:4, 27:1 notes [1] - 39:21 nothing [4] - 7:13, 25:1, 29:5, 36:6 notwithstanding [2] - 12:3, 12:5 November [1] - 30:25 nowhere [1] - 6:20 number [2] - 2:19, 13:10	N
L	lack [1] - 26:11 lacks [2] - 27:15, 38:6 laid [1] - 14:11 landscape [1] - 17:13 language [2] - 14:18, 37:14 large [1] - 12:21	M	O
	machines [2] - 12:15, 12:18 magnitude [1] - 5:24 mail [6] - 21:19, 22:14, 22:15, 33:17, 33:21, 34:4	motion [4] - 2:17, 5:4, 12:13, 18:2 movant [1] - 3:12 moves [1] - 31:12 MR [38] - 2:22, 3:13, 3:18, 4:16, 4:19, 5:11, 5:19, 6:11, 32:22, 35:12	O'Brien [9] - 13:23, 15:12, 15:20, 24:6, 32:3, 32:7, 32:19, 32:22, 35:12

P	places [1] - 36:17 plain [2] - 34:20, 37:14 Plaintiff [2] - 1:5, 1:24 plaintiff [15] - 2:21, 2:24, 7:18, 16:10, 20:4, 20:11, 20:25, 23:2, 26:12, 26:13, 27:15, 28:20, 30:3, 38:6, 38:21 plaintiffs [6] - 21:16, 22:1, 28:7, 28:8, 28:12, 31:17 PLAN [7] - 3:24, 4:1, 4:7, 16:2, 16:12, 17:15, 27:18 plan [2] - 4:9, 16:19 PLAN's [2] - 10:7, 11:1 plans [2] - 9:11, 16:22 plausibly [1] - 10:6 playing [1] - 2:15 pleasure [1] - 39:12 point [7] - 13:21, 13:24, 14:5, 16:9, 17:1, 27:1, 37:8 points [2] - 31:22, 36:11 pole [1] - 37:8 policies [3] - 25:4, 29:6, 29:8 policy [3] - 18:13, 22:25, 25:10 poll [2] - 37:5, 37:10 polling [1] - 36:17 populations [1] - 13:2 position [7] - 19:20, 19:24, 28:5, 30:11, 32:5, 35:15, 37:17 positions [1] - 23:9 possibility [2] - 37:25, 38:25 possible [2] - 36:5, 36:9 possibly [1] - 10:13 post [1] - 28:22 potential [1] - 10:9 potentially [2] - 10:8, 20:17 practice [1] - 26:20 pre [1] - 4:5 pre-trial [1] - 4:5 precluded [1] - 19:2 preliminary [8] - 2:17, 5:4, 5:13, 12:13, 18:2, 27:13, 29:15, 31:16 prepare [1] - 17:6	prepared [2] - 5:8, 39:12 presented [1] - 23:3 presiding [1] - 2:11 presumably [1] - 37:10 pretrial [4] - 13:11, 13:16, 19:11, 19:22 pretty [1] - 27:11 previously [1] - 35:12 primarily [2] - 13:6, 22:12 primary [2] - 12:20, 26:19 principles [1] - 24:3 prison [10] - 4:3, 10:7, 10:21, 11:4, 12:15, 13:4, 13:12, 15:1, 16:13, 17:1 prisoner [8] - 6:25, 7:19, 9:2, 10:13, 12:7, 12:8, 26:16, 38:20 PRISONERS [1] - 1:3 prisoners [11] - 6:16, 9:15, 12:6, 13:9, 13:18, 16:19, 16:22, 17:9, 21:5, 21:7, 23:22 Prisoners [2] - 2:17, 3:23 procedural [1] - 26:12 procedure [2] - 26:10, 26:12 proceed [1] - 5:8 proceedings [1] - 39:21 process [2] - 11:17, 12:10 produce [1] - 8:20 produced [2] - 11:5, 11:7 prohibited [1] - 13:16 prohibition [1] - 21:13 prong [1] - 5:12 pronouncement [4] - 10:23, 11:3, 13:25, 33:22 proper [1] - 25:8 properly [2] - 24:6, 24:9 proposition [1] - 32:19 prosecute [8] - 9:2, 9:11, 16:19, 30:4, 30:8, 30:17, 30:20, 31:2 prosecuted [5] - 9:13,	9:14, 9:16, 24:24, 30:22 prosecution [5] - 8:6, 8:16, 29:25, 30:1, 37:25 prosecutions [2] - 8:15, 36:1 protection [6] - 28:14, 28:16, 29:13, 32:7, 33:1, 33:9 Protection [1] - 4:23 prove [1] - 10:13 proven [2] - 12:21, 13:7 provide [4] - 12:14, 15:9, 16:22, 19:25 provided [3] - 5:5, 18:13, 28:2 provision [1] - 11:11 public [1] - 4:25 Pullman [5] - 24:2, 24:18, 26:10, 26:25, 27:2 pure [1] - 37:8 purposes [2] - 16:11, 38:7 put [7] - 2:20, 5:1, 5:23, 5:25, 20:4, 36:19, 37:17	Q

respectfully [3] - 5:3, 9:7, 16:25 respond [1] - 18:2 responding [1] - 37:5 restraining [1] - 18:3 restricted [2] - 21:2, 21:4 retain [2] - 4:8, 10:1 review [1] - 20:18 reviewed [2] - 18:6, 21:22 reviewing [1] - 21:24 rights [8] - 4:1, 10:1, 17:5, 27:5, 27:7, 27:10, 28:16, 29:11 ripeness [1] - 38:11 rise [2] - 2:9, 39:15 risk [2] - 3:20, 29:2 room [1] - 3:7 Rosario [1] - 6:3 round [1] - 37:11 RPR [1] - 39:23 ruled [3] - 34:13, 34:17, 34:19 ruling [1] - 33:24	severely [1] - 37:22 shoulder [2] - 5:2, 36:2 shut [1] - 32:19 side [6] - 15:22, 17:10, 17:11, 26:2, 26:6 signing [1] - 27:23 similar [5] - 15:15, 26:9, 35:3, 35:11 similarly [2] - 32:11, 35:3 simply [1] - 15:18 situated [1] - 32:12 situation [3] - 17:13, 38:24, 39:1 skill [1] - 39:10 sliding [1] - 28:3 solely [1] - 36:16 someone [1] - 10:15 soon [2] - 36:5, 36:9 sorry [4] - 17:5, 25:21, 27:23, 32:17 sort [3] - 24:19, 35:15, 35:20 specifically [2] - 3:23, 18:11 speculation [2] - 9:8, 37:8 speculative [3] - 36:25, 37:3, 37:4 spent [1] - 16:4 Stacy [1] - 39:23 staff [2] - 18:22, 19:16 standard [2] - 5:13, 28:9 standing [11] - 16:1, 16:3, 16:9, 16:16, 24:19, 27:15, 34:1, 38:6, 38:18, 39:5 stands [2] - 32:19, 36:14 start [6] - 2:21, 4:16, 5:11, 21:15, 24:1, 31:23 State [14] - 7:15, 8:7, 12:14, 15:9, 16:22, 17:20, 18:25, 19:14, 19:25, 24:13, 36:4, 37:1, 37:6, 37:12 state [38] - 5:1, 8:10, 9:13, 12:10, 13:15, 13:17, 13:24, 15:11, 15:14, 15:15, 19:24, 21:4, 24:4, 24:21, 24:22, 24:23, 25:6, 26:11, 26:13, 28:10, 31:25, 32:3, 32:4,	32:22, 32:23, 33:3, 33:24, 35:7, 35:12, 35:17, 36:7, 36:18, 37:14, 37:15, 38:13, 38:19, 39:2 State's [7] - 5:23, 15:2, 19:20, 19:24, 23:9, 28:4, 28:9 statement [2] - 24:8, 30:19 STATES [1] - 1:1 states [3] - 6:18, 11:11, 12:25 States [3] - 1:17, 2:9, 14:2 statue [1] - 23:4 statute [22] - 8:11, 8:20, 9:5, 9:19, 10:8, 11:6, 11:7, 21:12, 21:19, 22:14, 22:15, 22:16, 22:19, 22:24, 23:22, 33:17, 33:18, 33:22 statutes [4] - 8:14, 10:5, 34:20, 37:21 statutory [2] - 7:1, 7:10 staying [1] - 32:7 stenographic [1] - 39:21 sticks [2] - 14:9 still [2] - 14:20, 14:21 stop [1] - 21:3 strategic [1] - 26:1 Street [1] - 1:13 stretch [1] - 7:6 strict [1] - 6:2 subcategory [1] - 34:21 subject [3] - 6:2, 21:19, 38:14 submitted [3] - 10:15, 18:7, 18:8 subsection [2] - 8:22, 8:23 substantial [1] - 36:22 success [3] - 5:12, 27:14, 29:13 suggest [2] - 7:14 suggested [4] - 7:19, 12:20, 13:6, 31:23 suggesting [2] - 7:19, 16:22 suggestion [1] - 24:20 suggests [1] - 6:15 summer [1] - 21:18 supplemental [1] -	38:17 supreme [8] - 13:24, 15:14, 21:20, 23:6, 37:14, 37:15, 39:2, 39:6 Supreme [12] - 5:14, 6:2, 6:14, 14:1, 15:13, 15:19, 23:10, 24:7, 24:10, 25:13, 34:9, 35:19 survive [1] - 29:14	today [12] - 2:16, 3:7, 17:17, 20:13, 23:3, 23:4, 24:5, 26:13, 26:19, 30:12, 38:18, 39:10 together [1] - 18:21 total [8] - 4:7, 4:21, 4:24, 6:4, 6:6, 6:7, 12:24, 36:24 totally [1] - 3:21 touched [1] - 15:25 towards [2] - 3:25, 17:1 traceable [1] - 17:16 tracks [1] - 23:17 transcript [1] - 39:21 trend [2] - 8:1, 8:3 trial [4] - 2:14, 4:5, 28:17, 28:18 true [4] - 7:22, 7:23, 38:8, 39:20 try [5] - 12:7, 30:21, 30:23, 33:25, 36:2 trying [2] - 9:16, 30:8 turning [1] - 27:13 turns [1] - 32:21 two [6] - 8:13, 8:14, 28:20, 28:23, 28:25, 32:11 type [2] - 21:2, 38:24 typically [1] - 11:21
S	safety [1] - 29:1 scale [1] - 28:4 scenario [1] - 37:9 scope [1] - 34:17 scrutiny [1] - 6:2 se [1] - 27:7 seated [1] - 2:12 second [3] - 14:12, 29:4, 29:15 Section [12] - 4:11, 4:13, 6:18, 7:5, 8:19, 11:11, 14:4, 22:2, 33:12, 33:20, 33:23, 33:25 section [1] - 9:4 secure [2] - 8:25, 10:19 securing [1] - 17:3 see [3] - 3:6, 3:7, 35:25 seeing [1] - 39:13 seek [1] - 26:14 sense [1] - 13:24 serve [1] - 13:2 service [1] - 4:2 serving [1] - 4:6 session [1] - 2:11 severe [5] - 6:1, 6:4, 6:8, 28:6, 36:2	standing [11] - 16:1, 16:3, 16:9, 16:16, 24:19, 27:15, 34:1, 38:6, 38:18, 39:5 stands [2] - 32:19, 36:14 start [6] - 2:21, 4:16, 5:11, 21:15, 24:1, 31:23 State [14] - 7:15, 8:7, 12:14, 15:9, 16:22, 17:20, 18:25, 19:14, 19:25, 24:13, 36:4, 37:1, 37:6, 37:12 state [38] - 5:1, 8:10, 9:13, 12:10, 13:15, 13:17, 13:24, 15:11, 15:14, 15:15, 19:24, 21:4, 24:4, 24:21, 24:22, 24:23, 25:6, 26:11, 26:13, 28:10, 31:25, 32:3, 32:4,	themselves [1] - 10:15 theories [1] - 16:3 theory [1] - 16:6 they've [3] - 16:4, 34:19, 35:13 thinking [1] - 14:25 Third [1] - 5:25 third [1] - 27:5 threat [4] - 29:18, 29:23, 29:25 Title [2] - 8:18, 11:11	U.S [1] - 39:24 ultimate [1] - 22:13 unable [1] - 4:5 unaware [1] - 24:12 uncertain [1] - 35:7 uncertainty [1] - 36:8 unconstitutional [7] - 4:23, 9:20, 9:22, 19:23, 21:8, 22:14, 29:20 under [28] - 4:23, 5:25, 6:25, 7:6, 7:20, 9:4, 9:9, 9:20, 9:22, 10:5, 10:8, 14:1, 16:3, 16:6, 18:12, 18:15, 18:16, 19:23, 22:2, 23:22, 24:6, 26:24, 28:25, 29:1, 32:16, 33:11, 36:21, 37:2 understood [5] - 24:5, 24:8, 32:6, 34:2 undisputed [2] - 5:19, 5:20

UNITED [1] - 1:1 United [3] - 1:17, 2:9, 14:2 unlawful [3] - 4:10, 8:25, 10:19 unlawfully [1] - 10:14 unless [2] - 19:1, 34:7 unlimited [1] - 11:9 unstable [1] - 17:14 up [4] - 5:10, 7:17, 16:1, 16:8 usage [1] - 7:12 uses [1] - 7:8	8:2, 9:12, 9:17, 10:4, 11:2, 14:16, 14:19, 25:10, 30:20, 30:21, 33:13, 36:8, 37:13 votes [1] - 16:15 voting [41] - 3:25, 4:9, 5:5, 8:3, 8:19, 12:15, 12:16, 12:18, 12:24, 12:25, 15:1, 15:5, 15:7, 15:10, 17:21, 18:13, 19:6, 19:15, 19:17, 19:23, 20:5, 20:15, 20:19, 20:21, 21:5, 21:6, 22:2, 22:23, 22:24, 23:5, 26:16, 27:4, 27:10, 29:20, 29:22, 31:3, 36:14, 36:15, 36:18, 37:9, 38:20	written [2] - 21:25, 30:3 Y years [3] - 18:12, 29:21, 29:23
V verdict [6] - 5:20, 5:22, 28:3, 36:11, 36:22, 37:2 versus [2] - 2:18, 15:5 view [1] - 25:3 vindicate [1] - 12:8 violated [1] - 28:17 violates [1] - 38:20 violation [8] - 15:9, 20:2, 21:1, 21:3, 27:7, 28:14, 29:11, 32:19 vote [64] - 4:2, 4:20, 4:22, 5:13, 5:15, 5:22, 6:9, 9:1, 9:16, 9:17, 9:18, 9:19, 10:19, 12:8, 13:6, 14:1, 14:17, 14:22, 16:12, 16:13, 16:14, 16:20, 17:3, 17:10, 17:14, 17:15, 19:1, 19:9, 21:19, 22:14, 22:15, 22:20, 23:11, 23:16, 23:20, 24:14, 25:7, 25:8, 25:10, 28:2, 28:6, 28:8, 28:18, 28:19, 29:17, 30:8, 30:21, 31:4, 32:21, 32:23, 33:17, 33:21, 34:4, 34:10, 35:17, 35:24, 36:3, 36:24, 37:22, 37:23, 37:25, 38:7 vote-by-mail [6] - 21:19, 22:14, 22:15, 33:17, 33:21, 34:4 voted [1] - 13:4 voter [5] - 9:9, 10:10, 30:18, 32:21, 37:16 voter's [1] - 10:1 voters [19] - 4:4, 4:10, 4:14, 4:19, 6:21,	W walk [1] - 11:16 Walker [1] - 14:17 Wan [1] - 3:4 WAN [1] - 2:3 wants [1] - 38:7 Washington [1] - 12:25 wealth [4] - 28:21, 28:24, 29:3, 29:7 week [1] - 2:14 weekend [1] - 39:14 weigh [3] - 10:22, 31:12, 35:10 Welcome [1] - 2:25 whole [1] - 17:3 willfully [2] - 8:24, 10:14 Wilmington [1] - 1:14 wish [4] - 4:2, 4:3, 8:2, 35:24 wondering [4] - 12:1, 13:8, 16:18, 24:18 workability [1] - 13:7 workable [1] - 12:21 worker [1] - 37:5 workers [2] - 37:8, 37:10 workforce [2] - 7:8, 7:11 worried [2] - 7:21, 8:11 worry [1] - 9:6	